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AUTHOR Tractenberg, Paul L.
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ABSTRACT

This is a report of the analysis and recommendations of the Commission on Human Rights in the City of New York, based upon public hearings held January 25-29, 1971. The Commission's investigation of the current personnel practices of the New York City school system yields one inescapable conclusion--that change is urgently demanded. The essential issue raised by the hearings was whether the system that now prevails can be further modified to meet the divergent needs of all the individual schools and districts in the city, or whether more drastic change is required. A few of the many who testified, principally the representatives of the Board of Examiners, consider the current system fundamentally sound. The view of the vast preponderance of witnesses, however, was that the current selection system has certain fundamental flaws which cannot be completely corrected except by wholesale reform. At the heart of the problem, as they see it, is a complex and rigid examination process presided over by the Board of Examiners. But problems relating to recruiting, establishment of eligibility requirements and the use of the probationary period, all of which are the responsibility of the Board of Education and the Chancellor, were seen as having considerable impact. (Author/JW)

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EQUAL EMPLOYMENT OPPORTUNITIES AND THE NEW YORK CITY PUBLIC SCHOOLS

An Analysis and Recommendations based on Public Hearings held January 25-29, 1971

by

The City of New York

Commission on Human Rights

80 Lafayette Street

New York, N. Y. 10013

John V. Lindsay, Mayor
Eleanor Holmes Norton, Chairman

Every New Yorker concerned about education should read this report. The city owes a debt of gratitude to the Human Rights Commission, first, for holding the significant set of hearings on this important topic and, secondly, for its very able analysis in this summary.

The Public Education Association

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This analysis was written by Paul L. Tractenberg, who served as Special Counsel for the hearings. Mr. Tractenberg is a Professor at Rutgers University School of Law in Newark. He also served as special counsel to the Board of Education from 1968 to 1970.

Mr. Tractenberg was assisted in the writing of the analysis by Edith Lynton, a staff member of the Hearings and Research Division of the Commission on Human Rights.

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Preface

The analysis, conclusions, and recommendations contained in these pages were reached unanimously and only after the most careful study and deliberation by the Commission on Human Rights. Under the Human Rights Law of the City of New York, this Commission could not avoid its mandate to investigate the repeated and heated allegations of exclusionary practices in the city school system. We knew from troubling experiences in this city in the past that when an issue begins to create tension in our city, the only responsible course for the relevant agencies of government is to seek reasonable and fair solutions to avoid senseless polarization. We believe that the education hearing, which saw the highest quality of participation on all sides, fulfilled this purpose.

The credit for this is due not to this Commission but to those who came forward with testimony. Everyone, from the highest officials to the concerned citizens who participated, demonstrated that this city has not lost its historic ability to discuss rationally and seek solutions to even the most controversial issues. Provided the structure offered by a carefully planned and fully open official public forum, New Yorkers of every background came forward with the most extraordinary calibre of data, documented material, and variety of views. For this the Commission is particularly grateful.

Not all will agree with all of our conclusions. Difficult issues had to be faced and resolved to the best of our ability. But at every point in our deliberations we were mindful of the importance of being fair.

Our job was to carefully consider a full week's testimony consisting of almost 2,000 pages and to provide the public with a usable summary and analysis. In addition, the full transcript is available to be read by any member of the public.

To bring about the needed improvement, the Commission is anxious to work with all concerned--school and union officials, community board members and school personnel, and parent and community groups. While we have criticized the efforts of many, we have nowhere found evil intent or lack of concern for improvement. Nor did any single individual or group emerge as responsible for what was revealed to be a problem of great complexity.

We are confident that if the same spirit of honest problem-solving which pervaded the hearings is applied to the task of producing the needed solutions, significant and early improvement will result. We stand ready to be of assistance.

May 1971

Eleanor Holmes Norton
Chairman

I. Summary of Testimony and Conclusions and Recommendations of the Commission.

The Commission's investigation of the current personnel practices of the New York City school system yields one inescapable conclusion--that change is urgently demanded. This was the clear consensus of five days of public hearings. For even the defenders of the current system recognized its deficiencies in selecting school personnel. The essential issue raised by the hearings was whether the system that now prevails can be further modified to meet the divergent needs of all the individual schools and districts in the city, or whether more drastic change is required.

A few of the many who testified, principally the representatives of the Board of Examiners, consider the current system fundamentally sound. They assert that the examination process, with its emphasis on a written proficiency test, screens out incompetents and provides an objective merit system under which selection is free from patronage and political pressure. They point to the significant number of recent modifications as evidence of the system's responsiveness to changing needs, and predict that, in time, the number of minority professionals will increase.

The view of the vast proponderance of witnesses, however, was that the current selection system has certain fundamental flaws which cannot be completely corrected except by wholesale reform. At the heart of the problem, as they see it, is a complex and rigid examination process presided over by the Board of Examiners. But problems with recruiting, establishment of eligibility requirements and the use of the probationary period, all of which are the responsibility of the Board of Education and the Chancellor, were seen as having considerable impact.

Critics of the system attack it on two levels--underlying theory and implementation. They contest the merit of the basic premise articulated by members of the Board of Examiners--that the primary function of a selection process is to screen out incompetents. Although it must do that, they say, the major problem confronting the schools is to identify candidates with real teaching and supervisory talent, and especially those with ability to educate inner-city children who are now most inadequately served. What is needed, therefore, and what is being sought actively in many areas of the country, are methods to screen in the best potential talent. In the words of Dr. John Fischer, President of Columbia University's Teachers College, "...[T]he most important task confronting

us is not the screening out of incompetents, but the identification of those with a combination of capabilities that we need to move the schools and our children ahead." Indeed, many witnesses said if emphasis were placed on identifying such people, the number of Black and Spanish-speaking professionals in the school system would increase substantially.

Even if screening out imcompetents were the most important objective for a selection system, many witnesses criticized the way New York City has sought to achieve this goal. The criticism falls into six prinicpal areas.

1. Outmoded. An elaborate, formal examination process may have served an important function more than 70 years ago, when the Board of Examiners was created and when the requirements to teach consisted of one year of teacher training school beyond high school, but, according to many witnesses including Chancellor Harvey B. Scribner, it is now "...antiquated, outmoded and inconsistent with both contemporary educational requirements and the concept of decentralized schools." Members of the Board of Examiners responded by pointing to modernization in the process and to evidence that, even today, such a process is necessary to prevent a spoils system.

2. Delay and Deterrence. Delays in promulgating eligible lists based on the examinations discourage many from ever applying to the school system and cause some who have applied to accept jobs elsewhere, according to Board of Education officials who are in charge of recruiting efforts. Aside from the delays, the examination process also reportedly deters many applicants because its procedures are confusing and offend some minority applicants. Moreover, Theodore Lang, until recently Deputy Superintendent in charge of the Office of Personnel, said problems in the promulgation of eligible lists cause difficulties in assigning teachers to fill vacancies. Defenses offered by members of the Board of Examiners included a description of recent innovations to reduce delays, such as testing seniors before graduation and giving one-day walk-in examinations in certain circumstances.

3. Rigidity. Board of Education President Murry Bergtraum said the present selection system's "emphasis on formalistic training, formalistic requirements, long periods of service" is both a reason why the New York City school system has a low

percentage of Black and Puerto Rican professionals and a disservice to all applicants. Chancellor Scribner, Community Superintendent Edythe Gaines and many other witnesses bemoaned the limited pool of eligible candidates available under the current system. Dr. Jay Greene of the Board of Examiners, on the other hand, argued that "flexibility" often is just another name for the spoils system, and, in any event, the current selection process actually provides a larger, rather than smaller, pool of eligibles.

4. Cost and Patronage. Many witnesses criticized the high direct and indirect costs of the examination system. The Board of Examiners' annual budget is now more than $3.5 million, with all but a very small portion going to salaries. For example, more than $2 million is paid, at a per day rate of almost $100, to temporary examination assistants, most of whom are also full-time professional employees of the school system. An indirect cost of the examination process which many witnesses found objectionable is the cost of private coaching courses usually conducted by current supervisory personnel. The registration fee alone is substantial; but witnesses also spoke of the cost in time and energy expended on an exercise with limited, if any, relevance to performance of the job. Dr. Greene responded to these criticisms by asserting that another written examination, such as the National Teacher Examination, would be more expensive, and that decentralized recruiting and selection by the 31 community boards would be still more costly. The bases for these predictions were, however, challenged.

5. Invalidity and Bias. The most frequent and serious of the critical comments about the current selection process is that it lacks validity and objectivity. Two types of validity are pertinent--predictive and content. According to the testing experts who testified, predictive validity refers to an examination's ability to identify who will perform well on the job. Content validity, on the other hand, deals with how well an examination tests for specific knowledge or skills required on a job and how important the knowledge or skills tested for are to total performance. Many witnesses charged the Board of Examiners' examinations have no predictive validity--that is, there is no evidence a high scorer on the examination will perform better than a lower scorer. And members of the Board agreed that they have no basis for making such a prediction, and that, in fact, for teacher examinations they have never attempted a predictive validity study. Their explanation is that predictive validity is very elusive, especially when good performance is difficult to define. Moreover, they rely on content validity.

According to Dr. Robert Thorndike, Professor of Psychology at Columbia Teachers College and a testing consultant for the Board of Examiners in current litigation, content validity depends upon two main ingredients--adequate job descriptions from which to select key job skills, and the necessary expertise to construct examination items which will effectively test for those skills. Many witnesses, including several testing experts, charged that neither of these ingredients is present in the school system's examination process. According to Dr. Lang, during his five and one-half years as Deputy Superintendent in charge of the Office of Personnel there was no updating of job descruptions for any teaching positions. And Dr. Richard Barrett, a test expert, said that the job descriptions for supervisory positions which he had recently seen were "mere skeletons" not providing the kind of information useful for the test constructor. Lack of expertise in constructing test items was also charged by a number of witnesses. All the expert witnesses agreed that psychometric skill is indispensable to the construction of a valid examination. Yet, according to members of the Board of Examiners, their entire permanent professional staff consists of pedagogical personnel from the school system assigned to them by informal procedures with no requirement that any of these personnel have expertise in test construction. The Board also has a large corps of temporary examination assistants which is selected by equally informal procedures. Some of these assistants are from outside the school system and presumably provide psychometric expertise. However, members of the Board of Examiners testified that much of the test construction is actually done by personnel whose principal expertise is their experience as supervisors within the school system. The four regular members of the Board of Examiners (the Chancellor or his designee is the fifth member) are required to take a Civil Service examination which covers test construction, among many other subjects, but none of the current members' main background is in psychology, test development, personnel management or a related field. All four are former English teachers who have been supervisors in the New York City school system.

It should be noted that if an examination lacks validity in the sense that it is not job-related, serious legal issues will be raised under the United States Constitution and federal statutes and regulations as well. Stephen Pollak, former Assistant Attorney General in charge of the Civil Rights Division of the U.S. Department of Justice, described in detail the

legal requirements which pertain. Among other things, he testified that "no school board may lawfully use a standardized test as part of its selection process, whether for hiring, retention or promotion, unless that test is a valid and reliable measure of the candidate's capacity to perform well on the job." Members of the Board of Examiners did not deny that more validation should be made. Dr. Greene said, "I agree we should have more research and go into matters of validity whether predictive or content." The defense offered was that in its budget of more than $3.5 million only about $40,000 was available for research.

Many witnesses charged that the examination process is not only invalid but also discriminatory, in effect if not in purpose. And the bias alleged is not racial or ethnic alone; it operates against all outsiders, against all who think differently. One witness, Dr. Laurence Iannacone, Professor of Education Administration at the University of Toronto, described the personnel system of the New York City schools as "so inbred as to be sociological incest." Most of the critical witnesses said the examination process has two main sources of bias--cultural and geographic bias in the written test and subjectivity in the oral interview and review of record. Some of the most compelling testimony about alleged bias came from Spanish-speaking witnesses. If, in fact, the examination process discriminates against Spanish-speaking teachers it would be especially unfortunate in view of the critical need for bilingual teachers. With close to 300,000 Spanish-speaking students in the school system, there are reportedly far fewer than 1,000 Spanish-speaking teachers. Witnesses representing the Chinese and Italian communities also testified about the exclusionary effect of the examination process. Members of the Board of Examiners respond to charges of bias by enumerating the safeguards built into the system to ensure objectivity. These include openness in terms of ability to take the examinations and to be apprised of the qualifications, scope and pass marks, full documentation and reviewability, right of appeal, confidentiality during the examination process, and professional development and administration of the examinations. What the critics maintained was that these criteria, however laudable, are not being fully met. Members of the Board of Examiners conceded that there have been "hazards" in parts of the examination, but denied that this is still true, pointing to recent changes in their procedures.

6. Inconsistency with Decentralization. Finally, many witnesses said that a selection process with such great emphasis on centrally created, administered and graded examinations leading to centrally promulgated eligible lists from which personnel have to be selected around the city is inconsistent with meaningful decentralization. Chancellor Scribner in particular expressed the hope that community boards would soon have real selection authority without "a form of city certification...laid on top of state certification". Until they do have such authority, he said, "these boards will operate with severe and undue constraints. They will not be fully responsible for the total management of the schools under their jurisdiction and no mechanism for holding these boards fully accountable for the effectiveness of their schools can be devised." Frustration with a highly centralized selection mechanism and the belief that largely local selection would be more effective were expressed by community board members, community superintendents and school principals. Defenders of the current system argued that a more completely decentralized personnel system would be costly and duplicative. Also, they said, local pressures would produce a spoils system under which those in power handpicked appointees.

Much of the testimony presented at the Commission's hearings dealt with flaws in the current New York City personnel system, especially the selection facet. But, the hearings were designed to be more than a forum for those with particular grievances. Exploring possible alternatives to the current system, based on developments around the country, was an important goal. To achieve this, a wide range of expert witnesses was brought together because of their leadership in teacher education selection techniques, especially testing and innovative programs preparing school personnel on all levels; or because they represent state education departments or urban school systems actively engaged in developing new forms of personnel screening and selection. Moreover, all witnesses, and particularly those serving in leadership roles in the New York City school system, were asked to assess the merits of possible alternatives.

The consensus which emerged from this testimony was one of general dissatisfaction with traditional selection methods, relying as they do upon an assessment of pre-employment preparation and giving little attention to effective measurement of actual performance. Thus, the criticism and demands for change within New York City are part of a nation-wide reaction

against and reevaluation of the philosophy of personnel selection and professional development epitomized by the Board of Examiners and its emphasis on the written proficiency test.

Recently, for example, the United States Supreme Court held in the case of Griggs v. Duke Power Co. that standardized tests which are not sufficiently job-related cannot be used for employment purposes if they have the effect of disproportionately screening out minority group candidates. Within various professions, criticism of traditional licensing tests, such as bar examinations, on the grounds of bias and invalidity is growing. Leading educators throughout the country are concentrating on the development of systems of performance-based criteria for selection of school personnel which would largely replace traditional methods. This effort is intimately connected with a total remodelling of teacher training to focus on in-school skill development. Such changes must go hand in hand with restructuring of certification or licensing procedures, and imply close cooperation among the professionals, the certifying or licensing authorities, and the community.

Most educational leaders favor a dual process of selection consisting of a highly flexible and open initial screening, with final selection on the local level, preferably after a period of service or internship sufficient to allow critical and objective observation and evaluation. A variation suggested by some witnesses is a system of two-stage certification, provisional and permanent.

Given this preference, it is not surprising that the principal alternative proposed for New York City was reliance on state certification for initial screening and on community board and superintendent for final selection without the intervention of a substantial city-wide process. Although state certification has certain limitations, it is being improved and, even now, provides an openness and flexibility which many witnesses believe is essential. Freeing the city school system--which has about one-third of the State's pupils--from preoccupation with the process of written tests for 1,200 licenses, would be a powerful stimulant to accelerated development of new standards and approaches throughout the State. New York City, with its enormous and varied school population and its array of colleges and universities, could be a fertile source of new ideas and programs. Decentralization, if more fully utilized, would offer a unique opportunity to measure and compare differing

selection techniques.

Local selection is however not without some potential problems. According to a number of witnesses including community board members, community boards and their superintendents will have to develop their expertise in selection techniques, and adequate safeguards against favoritism will have to be incorporated. (Because this is a matter of special concern to the Commission, it will be discussed in more detail later in this section.)

As more reliable performance-based criteria for selection are developed, state certification and local selection both will rely on them. To what extent there should be continued reliance on written tests was discussed by many witnesses. Most witnesses criticized substantial reliance on written tests which focus on acquired knowledge. In the view of many experts, written tests are costly to administer and process, and require continual assessment and revision to assure validity. In addition, even if intended as only one facet of the selection process, written tests frequently become the whole of it because test scores appear more conclusive and incontrovertible than the judgment of peers, supervisors or observers. Evidence of this tendency is manifest in New York City where the probationary period--ostensibly a critical element in selection of personnel--is grossly underutilized and, in fact, serves only to disqualify those who display totally unacceptable behavior. Other witnesses said formal written tests may actually be counter-productive in assessing capacity if they place undue emphasis on test-taking skill at the expense of qualities such as abulity to communicate knowledge, creativity, commitment, and the ability to grow in sensitivity to the needs of children and parents. Studies of test performance, according to one expert witness, suggests this may pose special problems for minority candidates. And, more generally, witnesses stressed that standardized written tests create a clear potential for discrimination, whether intentional or not, against minorities or "outsiders"to any given locality or system. Finally, according to witnesses, even partial reliance on a written test would impede the development of more valid performance-based selection criteria.

These objections, together with the lack of evidence that the few school systems in the country currently using locally developed written tests have superior teacher quality or pupil achievement, led some witnesses to favor elimination of such tests from the selection process. Only New York City and Buffalo are expressly required to rely on competitive examinations which include a substantial written test, and

Buffalo's examination requirement was reduced in 1968. That city's school superintendent favors elimination of required examinations altogether.

Other witnesses favored elimination of all written tests, whether locally developed or not, because, in their judgment, written proficiency tests generally do no more than confirm college grades. In New York City--where approximately 65% of new teachers are graduates of City University and many more come from other local institutions--such confirmation would seem especially unnecessary. Moreover, since New York City promotions are generally awarded to those with substantial years of experience in the city's schools, written tests for supervisory and administrative positions are perhaps even more superfluous than those for teacher applicants.

Some witnesses suggested that written tests may have a continuing place in well-conceived selection procedures in conjunction with other selection techniques, but only to the extent that test scores can be demonstrated to have a clear and consistent relationship to performance. The National Teacher Examination of the Educational Testing Service, which is already used in some circumstances within New York City, or a state-wide certification examination, were proposed by some witnesses as the most logical written test component of the process. Other witnesses were critical of both. The NTE was portrayed as yet another culturally biased test. The Educational Testing Service is aware of this concern and has taken steps to eliminate biased material on the advice of panels of minority educators. It is also designing special examinations for teaching in an urban setting and for Spanish-speaking applicants. Even with these efforts, ETS representatives stress carefully the limited role the NTE is designed to play in the selection process and the potential for abuse. But, if used within those limits, the NTE has certain advantages. It is offered frequently across the country and is ordinarily taken by many prospective teachers. Its designers have shown an openness to change and an awareness of the danger of bias. A state-wide written examination was criticized largely on the ground that it would impose on all professional personnel throughout the State a system which has proven unsatisfactory in New York City.

Despite the broad consensus favoring an employment system based on improved state certification and local selection, two concerns voiced at the hearings warrant careful consideration. Fears were expressed

that the process will degenerate into pure patronage and that vigilante action by special interest groups will control decision-making. Proponents of the city-wide examination see it as protection against such abuses.

Little evidence has been presented to support this assumption, and extensive testimony at the hearings by supporters of the examination system failed to lend credibility to fears of corruption and disorder. Nonetheless, the Commission does not take these fears lightly, because they have often been linked in public debate to valid issues of due process.

The essence of due process in the American system is that law, rules and custon should err always on the side of zealous protection of individual rights. The Bill of Rights is not just important in case of massive threat to civil liberty; it is important as a constant safeguard against the slightest possible abridgement of any citizen's rights. Proof of possible large-scale abuses in the city school system is not, therefore, necessary to justify strict safeguards to ensure fairness and due process. Adequate safeguards, along the lines discussed in Recommendation #3 below, should be an integral part of any selection process whatever its potential for bias or corruption. This is essential even though testimony at the hearings generally failed to support the oft-stated fears that local selection actually leads to bias or corruption.

In communities where local selection, unhampered by an elaborate written test, is the rule, patronage and related problems have not become concerns. Witnesses from other cities and states reported that they are not plagued by such problems. Teachers in districts which do not use local written examinations are neither demonstrably inferior nor less secure in their jobs. Here again, the appraisal of Dr. Joseph Manch, Superintendent of Schools of Buffalo which has the only system in the State comparable to this city's, is most persuasive. He reports that there have been no incidents involving such interference in Buffalo since examinations were eliminated for supervisors and principals.

The testimony presented reveals that the belief that corruption would follow if selection were handled by community boards in New York City is speculation based on the view that intergroup problems in this city are so serious that irrelevant considerations would dominate concern for an improved educational system with its concern for objective employment criteria based on performance. Albert Shanker, President of the UFT, for example,considers what is feasible elsewhere, in

more homogeneous and stable communities, impossible in New York. He and the UFT favored abolition of the Board of Examiners until just five years ago, but now regard it or some other written examination process as a necessary bulwark against open confrontation between teachers and community groups. There was no indication that such critics had studied other means to prevent bias that might not at the same time have a deleterious effect on recruitment and mobility in the public school system.

New York does face undercurrents of racial and ethnic tension which have in the past spilled over into dangerous and frightening conflicts. It would help little, however, in efforts to prevent future conflicts, if fear or speculation were sufficient reason to perpetuate a system which has had other harmful effects. It is not asking too much of an employment system to both afford significant participation across racial and ethnic lines and assure freedom from bias and unfairness.

To be sure, change, almost by definition, carries some unpredictability or risk. In this instance, the tasks of all concerned are to reduce the unpredictability by conscientiously appraising the facts and experiences at hand, and by dealing specifically with the actual risks.

The facts relating to other communities are not alone in contradicting the fears of favoritism. New York City's own experience to date with decentralization indicates that concern with the quality and effectiveness of education is more intense and more generally held by an alert and sophisticated public than in any previous period. This was manifested not only by the widespread and high quality participation and interest in the hearings, but also in the testimony of witnesses, which included community board members, community superintendents, and parent and community spokesmen.

In Community Superintendent Andrew Donaldson's words, "The public is in there watching. The mothers and fathers are at those schools nearly every day. These community school boards have been elected by a very aroused populace. The children themselves are aware of how well the school is run or misrun. And for us to assume that simple political patronage will move people into these positions and that no questions will be asked, I think is to assume the ridiculous."

Less explicit, but clearly present in the minds of those who oppose decentralized selection, is the possibility that race or ethnic identity, in response to local pressure, will become the overriding factor in selection. This would be persuasive indeed if the fear were realistic. But the actual experience indicates otherwise.

Dr. Marilyn Gittell, Director of Queens College's Institute for Community Studies, reported that a recent study of the three demonstration districts shows that screening of staff was thorough and careful and those selected were generally superior candidates. Parents who participated in screening were concerned with teaching ability and not race and ethnic background.

A study of parental attitudes in the choice of principals conducted by the Center for Community Studies at Columbia Teachers College found the majority of parents - 62% of those surveyed - ready to identify qualities they considered essential, but with no opinion on the merits of ethnic factors.

This finding was confirmed by Public Education Association studies of individual schools, cited by David Seeley, its Director. His opinion, supported by an analysis of numerous individual schools' procedures, is this:

> The cry that we want a Black principal for Black kids is made by a few spokesmen in certain cases, but this seems to be mostly a generalized expression of dissatisfaction with the kind of staff that has been produced by the white-controlled system. Once the actual selection procedure begins filling a particular vacancy, we have seen, in every case examined, that the parents' prime concern is to find the candidate who will do the best job for their children. As often as not, the person selected is white.

The Commission is impressed that the only empirical studies of which we are aware indicate that corruption has not become a factor in the school system as decision-making has gravitated to the local level.

Clearly, however, race or ethnic background is not a matter which the school system may ignore. Assuring both equal opportunity and effective education will require affirmative action to upgrade the role of minorities in the system--the kind of affirmative action routinely required of private employers by fed-

eral, state and local law, This does not imply the establishment of onerous quotas or preferential hiring. It does acknowledge the importance of achieving better racial representation as a goal of all personnel policies and practices in a country where such equalization has been tragically delayed.

Race has been an explicit factor in making more fair the school personnel policies in such cities as Detroit and Buffalo where significant improvements in providing fair employment opportunity have occurred. For example, according to Aubrey McCutcheon, Deputy Superintendent in charge of staff relations in Detroit, "We say we are going to have, and we require that there be, an increase, a substantial increase, in the number of Black administrators in our school system." In addition, numerous witnesses testified to the deficiency in the education of Spanish-speaking and Chinese-speaking children, a case where ethnic factors as they relate to the ability to speak a language in addition to English attain particular significance.

If commitment to teach children (especially those who have difficulties in the school system), sensitivity to the needs of a community, ability to communicate effectively with children and their parents were accorded appropriate weight, along with subject matter knowledge, literacy and the like, undoubtedly a higher proportion of those selected would come from minority groups.

Under such an approach, the number of bilingual persons on the professional staff of the school system would undoubtedly increase significantly. Also, other serious problems arising from undue restriction of eligibility would be alleviated. Current lists of eligibles, especailly in the case of principals, offer few choices to many schools, since those on the lists often decline to consider schools where openings exist. Inexperienced teachers are often in effect "drafted" to what are considered difficult assignments, where they mark time until they are eligible for transfer. Several community superintendents and principals testified to their ability to find well-qualified persons, eager to serve in the very assignments rejected by many of those on the eligible lists. Flexible local selection would lift many barriers of this kind that now disadvantage further the disadvantaged schools.

This does not mean that race or origin standing by itself as a qualification, or any form of arbitrary exclusion, can ever be tolerated. The aim of change must be to improve the quality and effectiveness of personnel and to equalize employment opportunity through greater openness and flexibility. Any resort to the

narrow criterion of race or origin would not only do violence to basic concepts of human rights but would undermine the purpose of reform. Adequate safeguards against this kind of abuse must accompany any new system.

Members of community boards were among the first at the hearings to recognize the need for a range of supportive services to permit them to discharge adequately their obligations to all their constituents. They pointed to their need for assistance in developing sound recruitment and selection practices and expertise in evaluating performance. Several recommended specifically that local selection be required to be open and readily reviewable and that adequate protection against favoritism be developed.

It should be noted that the Board of Education and the Chancellor already have certain statutory powers which can be used in this connection on a city-wide basis. For example, the Chancellor has the power and duty to establish minimum education and experience requirements for professional personnel. The Board of Education has the authority to develop city-wide personnel and procedural policies which the Chancellor has the power and duty to enforce. Moreover, the State Commissioner of Education has broad authority to hear controversies arising in the schools. And, of course, recourse to the courts is always possible and frequently used in school matters, as for example in a suit now pending in a New York federal district court against the Board of Examiners and Board of Education on the grounds that the supervisory examinations are discriminatory and invalid.

Although the needs of individual schools vary, even under a local selection system there would be elements common to all districts and all schools that could be handled most efficiently by a central body. For this reason, many witnesses saw a new role for the Board of Education, perhaps by using the permanent personnel of the Board of Examiners, among others, in the (Board of Education's) Office of Personnel as an advisory and review agent. This central agency could provide information to all applicants interested in New York City, help to put them in contact with community boards whose needs matched the applicant's skills and interests,investigate and review data concerning all applicants, develop guidelines for selection procedures, train community board members in interviewing and observation techniques, design performance criteria and measurements for evaluation, and supply outside experts in training, selection and evaluation to consult with community boards. In addition, such

a central agency could design and administer internships and in-service training programs, and conduct systematic research to measure the effectiveness of personnel and to compare different selection and training techniques. This is a challenging assignment, far more demanding than designing and administering standardized written tests. Upgrading selection procedures will require not only greater flexibility and innovation but also careful research and evaluation.

However, the transition to a new selection system might pose problems beyond the ability of the central agency to handle immediately. The Commission has taken this into account in shaping its recommendations (see #2 below).

Recommendations

The Commission, after careful study of the testimony and based on the foregoing conclusions, makes the following recommendations:

1. The Board of Examiners in its current form should be discontinued and its permanent staff transferred to the Board of Education's Office of Personnel. This action, we believe, is critical if a narrow concept of merit, based largely on written proficiency tests of questionable validity, is to be replaced by a more realistic appraisal of merit. In any reorganized selection system, however, the Commission believes the presence of adequate due process safeguards is indispensable (see #3 below).

The current Examiners' system is costly, cumbersome, and, regardless of intent, restricts the opportunities available to many who might contribute ably to the education of this city's school children, especially inner-city children. Such professionals and aspirants include members of minority groups and, as the testimony revealed, many others as well.

In their testimony, even the members of the Board of Examiners claimed only that the testing system screens out incompetents and protects against extraneous influences in selection. They were not, however, able to present any evidence of a relation between test achievement and performance on the job. The Commission believes that this minimal proficiency can be ensured under a system which also places greater emphasis on local application of performance-based criteria than does the Board of Examiners system. We believe also that, although the testimony does not support the fear that favoritism and corruption would

increase under a new system, protection against such influences can best be provided by specific due process requirements.

The background knowledge of the city's school system undoubtedly possessed by the members of the Board of Examiners in conjunction with the expertise of qualified specialists could be utilized in conducting much-needed research on selection criteria for use by the City Board of Education and community boards. As part of the Office of Personnel, they might also carry out such functions as channeling applicants to appropriate community boards, investigating and reviewing data about applicants, training members of interested community boards in selection techniques and developing panels of experts to be available to assist community boards on selection matters.

2. The New York City school system--like virtually all other school districts in New York State and the rest of the country--should rely on state certification for initial screening of professional staff. Community boards should have the ultimate responsibility for the second and crucial stage in the employment process--actual selection of staff based upon sound and objective selection criteria and procedures geared to the needs of individual boards. To assist community boards while they are developing their expertise in selection matters, a special, temporary panel of education experts appointed by the Board of Education should provide community boards with pertinent information and with advice about specific problems.

State certification can and should be improved, but as a limited tool confined to screening, it is less costly and more open and flexible than a city-wide licensing system. There is no evidence from its use throughout the State that it compares unfavorably with the present New York City system either in terms of teacher competence or pupil achievement. Its use would enlarge significantly the city's pool of potential teachers and supervisors in a way that would permit community boards needed flexibility, subject to adequate due process safeguards.

As is true of virtually every other board of education in New York State, community boards should have authority to select from among state-certified candidates. The special, temporary panel appointed to assist community boards should include, among others, recognized experts whose experience relates to the use of state certification in combination with flexible local standards. The panel would provide community boards, teachers, parents and all concerned

with relevant information and expert advice on specific problems, including those which may arise during the changeover of selection systems.

3. At the earliest date, the Board of Education should develop appropriate policy guidelines to ensure protection of due process for all applicants and personnel. Detailed administrative regulations for enforcement of the guidelines should be promulgated and enforced by the Chancellor.

Despite the lack of factual evidence that systems not employing formal local examinations with written tests have special problems of corruption and favortism, the possibility is one which the Commission does not treat lightly. Only through the most precise application of due process guidelines can the system ensure protection of individual rights and prevent such problems from arising in the first instance. Current collective bargaining agreements and Board of Education by-laws provide grievance procedures which apply throughout the city school system. They will, of course, continue to be enforced. But they do not adequately cover applicants for employment whose rights should be protected by appropriate Board of Education policy guidelines and more detailed regulations promulgated by the Chancellor. The Chancellor already has the power and duty to enforce throughout the city all prevailing policies, by-laws, rules and regulations, and contracts by means including, if necessary,suspension, removal or supersession of community boards.

Protection through due process is the foundation of a democratic society and all its institutions--its schools certainly no less than any other.

4. The City Board of Education and the community boards, directly and through the many institutions of higher learning and other educational organizations with which they have working relationships, should assume a leadership role in developing performance-based training and selection techniques. This can serve both as a spur and a resource to the State in its ongoing effort to incorporate meaningful performance-based criteria into the certification process. Redistribution of the power of selection is not enough. Unless, both at the state and local level, strides are made toward better training and assessment of performance, the schools will not meet the needs of the children or the community. Moreover it is unfair to expect teachers to perform well under today's difficult conditions in the deteriorating urban environment without the guidance that will enable them to improve their performance.

In these efforts, special attention should be paid to those with experience in developing performance-based criteria, such as educators in Oregon, Washington, California, Minnesota, Michigan, Pennsylvania, New Jersey, Texas and Florida, states which have already made significant progress in this area.

5. The City Commission on Human Rights will take steps to develop an affirmative action program, in cooperation with the school system, specifying certain recruitment, selection and promotion measures, to be undertaken by community boards and the City Board with a view toward overcoming the low representation of minorities.

Many private employers have made agreements of this kind with the Commission as part of their obligations under the law. Such an agreement would provide the school system with the kind of minority group hiring guidelines (based on the valuable experiences of others who have required highly trained personnel in this city) which several Board of Education staff members said are desperately needed if real progress is to be achieved. The school system has sufficient flexibility to make a meaningful start at such affirmative action regardless of any legislative steps. Legislative action, however, is still vital if a personnel system is to be structured which provides maximum assurance of equal employment opportunity and which is most likely to produce professionals best qualified in every way to educate the children of the city.

* * * * * *

The basic recommendations of the Commission require legislative action. And these statutory changes are absolutely necessary for thorough reform of the selection process that now prevails in New York City. There are, however, many areas where changes can be made in the interim, changes to better integrate the several parts of the selection process and to make the whole more responsive to the needs of children and the community. Avenues open to the Board of Education could be used to greater effect and the Board of Examiners itself has the power to restructure the content and form of its examination process.

Much of the current attention, especially toward increasing the opportunities for minority personnel, is focused on recruiting. The limited success, thus far, of out-town-recruiting suggests that substantial

problems are created by the complexities and rigidities of the examination process. Those in charge of the Office of Personnel's recruiting programs suggested that attracting outsiders was difficult not only because immediate job offers cannot be made on the spot, but also because New York City has a negative image, a reputation of limited opportunities for minority persons. A vast reservoir of capable manpower remains untapped, both within the city and without, in large part because entry and promotion hinge on a series of separate examinations, each of which can involve substantial pre-examination preparation and expense, and substantial post-examination delay. One interim measure for alleviating this problem is the use of simplified examinations—either so-called unassembled examinations, which consist of review of record without written tests, or one-day walk-in examination with those short-form written tests - especially for those being recruited on campuses outside the New York metropolitan area. There are already precedents within the New York City system for using either unassembled examinations or one day walk-in examinations. Alternatively, the National Teacher Examination, which many prospective teachers take as a matter of course, could be used as a part of the selection process instead of a local written test. This simplified procedure could enable New York City to compete on more equal recruiting terms with city school districts like Dertoit whose recruiters are authorized to offer jobs on the spot to applicants who rank in the upper half of their class and who make a favorable impression during the interview.

An interim change in recruiting emphasis might also help. Virtually no effort has been made to recruit candidates for supervisory positions from outside the system. This contributes to New York City's reputation as a closed school system, especially for minority groups. If outside candidates were actively sought (and if the selection process did not make it more difficult for them, as many witnesses testified was the case) the reputation would begin to change.

Further beneficial changes could result from modifying eligibility requirements. The first step in the selection process is the determination of eligibility for examination. The Board of Education has been moving in the direction of changing the qualifications largely by reducing the number of years that must be served on one job level to be eligible for examination for promotion. Because most minority personnel are relatively new to the system, reducing the time requirements probably will accelerate the rate of their promotion, and there is no evidence that this will adversely affect quality.

If the content and form of the examination are unchanged, however, the impact is likely to be limited. Moreover, upgrading remains a lock-step progression through the ranks. What is needed is the determination of qualifications based on skill, demonstrated capacity, and personality rather than on strict and substantial quantitative measures of time in grade. This approach would be consistent with current developments in educational circles regarding the identification of urban school administrators. For example, Professor Michael Usdan of City University described a program under which mid-career people from various professions are being specially trained to lead school districts without the traditional educational or experience background.

Another important facet of the selection process, which can be the subject of interim change, is the development of job descriptions. Analysis of functions for all job titles clearly needs updating and refinement. The consensus of testing experts was that a precise job description is the crucial element in designing an effective selection method. The Board of Examiners, in theory, designs tests to meet job descriptions given them by the Office of Personnel. For teachers, a new and continually revised job description is an urgent need. According to Dr. Lang, there has not been a new job description for teachers in at least five and a half years. He stated, " I guess we assume we have a knowledge of what a teacher does and the Board of Examiners has a knowledge of it." Such an assumption is unfounded in the face of criticism of the teachers' examinations. For supervisory and administrative positions, new job descriptions are prepared when a new examination is scheduled, but outside test experts consider them inadequate bases for sound test construction. Dr. Barrett characterized current descriptions of principals' functions as a "skeleton of a job description that doesn't give the kind of information that is useful for a person who is going to develop a test." Job analysis is a sensitive and demanding task, one that requires expert skill. Furthermore, community school boards and their superintendents should be involved in the process to assure relevance to local school needs. It is important that where new criteria are being developed parents and other community representatives, as well as professional educators, make a substantial contribution to the process. The Board of Examiners cannot be faulted entirely, if the tests they design are based on out-of-date and overly broad statements of duties rather than timely and specific skills and qualities.

The next element in the selection process, and the focal issue of the hearings, is the design and administration of tests, written and oral. The most obvious deficiencies result from the limited resources of the Board of Examiners in designing selection instruments are in assessing their validity. A consensus emerged that far more research is needed into all facets of the examination process. If simplified local examinations or the NTE were used instead of the current, more elaborate examinations, the Board of Examiners would have more manpower for its research efforts. Such an immediate shift in its priorities would be an important first step toward its ultimate role as the research arm of the Office of Personnel's staff recruitment and selection activities.

The final element in selection, the probationary period, requires careful restructuring. Optimally, it should serve as a carefully observed internship. Increased local initiative arising from decentralization may focus more attention on the probationary period, but this cannot be left to chance. The Board of Examiners correctly asserts that its tests do not predict performance. Those with the responsibility for rating new personnel must be given the tools for reliable appraisal of performance. Effective use of the probationary period requires staff time and planned involvement of colleagues, supervisors and community board members, as well as training of all those who take part. Satisfactory use of the probationary period could, in fact, provide significant feedback about the testing process itself.

On balance, the preeminence in professional personnel matters accorded the Board of Examiners results largely from the fact that other elements, intended as important parts of selection, have been neglected. The Examiners' apparent autonomy is partially a reflection of inadequate performance by those responsible for preparing job descriptions and for following those who succeed on the tests through the probationary period. Even an adequately staffed Board of Examiners can only serve as intended, as a resource to the Board of Education and, therefore, to the schools, if all parts of the selection process are well handled and properly articulated. Until the current system is replaced, it is imperative to close the gaps exposed during the hearings. Moreover, the Detroit experience indicates that commitment from the top is the essential ingredient. The number of minority group members within the professional staff can be increased considerably, within the confines of any system, if that is the clear intent of those in charge.

What is required, above all, is the formulation of a positive plan for hiring school personnel, and this can begin even before legislative changes are effected. Many witnesses commented on the lack of guidelines for recruiting, selecting or evaluating personnel. Such guidelines need to be developed for the system at large, identifying the broad general qualities to be sought and how they best can be measured, as well as a specific program addressed to increasing minority employment. It is not enough to think only in terms of recruiting minority candidates, especially when this amounts to lining up people who become discouraged at the complexity of procedures or for other reasons never materialize as additions to the staff of the school system. Procedures for facilitating their appointment and promotion are the indispensible concomitants. It is time for the Board of Education to identify specific employment goals and the means by which such goals will be achieved within a specified time period.

Two specific areas, susceptible to some immediate improvement without legislative action, so urgently demand attention, that they warrant being singled out for special mention. They are the career development of paraprofessionals and the employment of bilingual teachers and supervisors.

Paraprofessionals

Currently, some 15,000 paraprofessionals are employed in the city in a variety of job titles, mostly as educational assistants. The UFT, through its involvement in the paraprofessional program, has probably made its most significant contribution to equal employment opportunity in this aspect of the school system. Gardner Atwell, head of the Board of Education's Auxiliary Educational Career Unit,"estimates that 48% of the paraprofessionals are Black and 16% are Puerto Rican." Although many have been working in the schools for three years or more, less than one third are enrolled in career development programs in local colleges. The career ladder designed for paraprofessionals predicates progress on college course credits. Under current released time provisions, it will take, on the average, eight years of combined work and study to acquire a Bachelor's Degree. To date, none, except five who had prior college credits, have achieved the Associate Arts Degree, a level on the ladder providing a small pay increment, but no clear enlargement of function. No provision has been made to evaluate or accredit the years of experience and the skill acquired in in-school work, except where college programs accord experience some weight in counting total credits.

Witnesses, both paraprofessionals themselves and those who plan and conduct training for them, testified to the hardships endured, especially by the many who are mothers of young children, in the long years of working and studying, in the lack of job security, of transferability of experience, in the unequal and often unsupervised quality of work experience, the insufficient in-service training, and the seeming irrelevance to career aspirations of many college requirements. On the other hand, those who have trained paraprofessionals for work in schools outside New York City, or for jobs in other public services, report that with new forms of intensive training focused on and directly related to on-the-job activity, paraprofessionals have progressed more rapidly. Where traditional requirements were modified to accept new combinations of experience and study, paraprofessionals have been able to assume greater responsibility and make an important contribution to the service.

Until very recently, little tax-levy funds have been used for either employment or career development of paraprofessionals in the city's schools, and a staff of only three persons has been assigned to handle all aspects of their employment. Early in 1971, the Board of Education made its first allocation of a significant sum to finance college education for additional numbers, a noteworthy step because it indicates an on-going commitment to them. But the same limited hours of released time exist, and much more remains to be done in regularizing, standardizing and supervising their work so that formal recognition can be given to experience, where merited. Indications are that many-perhaps many of the best qualified and most ambitious-become discouraged by the slow pace and leave the schools for jobs in other service sectors, where progress is less dependent on college credits, and where released time provisions are more generous.

The paraprofessionals' major significance could be to serve as a pilot group for the development of performance based-criteria. Experimental teacher-training programs essentially use a paraprofessional model for the first and most important part of training--in-school experience carefully structured to allow for skill development and understanding of teaching problems--with theory and academic subject matter following and related closely to experiential development. Because the majority of paraprofessionals are minority group members who are mature adults strongly committed to working with children, especially the urban ghetto child, and are experienced in working within their communities, they represent a manpower resource that warrants fuller utilization. If career development

were structured to focus on in-service training and development, selection of teachers from among the paraprofessional ranks could be made with far greater reliability than from among the recent graduates of teachers' colleges and at a far more rapid rate than is now the case. This group is a logical source from which to infuse the system with increased minority personnel of demonstrated aptitude for, and strong attachment to, teaching as a vocation.

Special attention should be given to the Puerto Rican and, for the first time, to the Oriental paraprofessional, at a time when one of the school system's most urgent needs is for more bilingual personnel. In Chancellor Scribner's words, " I feel that one should be able to put into that classroom [those with children for whom English is a second language] first of all, a bilingual person." With an estimated low of only several hundred bilingual teachers in the schools serving close to 300 ,000 Spanish-speaking children, paraprofessionals could play an important role. One need is to increase the numbers of Puerto Rican paraprofessionals and the second is to increase the opportunities for them to move to full professional status. Few Puerto Ricans, of the small total number employed, are enrolled in career development programs. And almost no attention has been paid to the rapidly developing need for Chinese paraprofessionals at a time when that community is experiencing tremendous pressures from a new round of immigrants who speak only Chinese.

Bilingual Teachers and Administrators.

Bilingual teaching cannot depend entirely on paraprofessionals, however. Teachers and administrators of Puerto Rican and Chinese descent are grossly underrepresented in the schools, not only to serve the needs of Spanish and Chinese-speaking children and their families, but also as role models to encourage these children to stay in school, aim toward college, and consider teaching as a viable occupation. Spokesmen working in schools with large Puerto Rican enrollments in particular, attested to the special difficulty of employing bilingual personnel because so few become eligible through the existing selection channels. According to many witnesses, examinations give undue emphasis to English and to areas of information irrelevant to the immediate job and with which non-New Yorkers would be unfamiliar. They fail to emphasize the ability to communicate with the bilingual child. Federally funded bilingual projects and recruiting addressed to Puerto Rican colleges meet with only limited success

in attracting Spanish-speaking candidates. Freedom from conventional requirements would enable many community districts to find bilingual persons of high quality, who do not now seek teaching jobs, or who might not now succeed on the examinations. As Community Superintendent Gaines said, "In a district where close to 60% of the children come from Spanish-speaking homes, we have a talent pool of people who can teach Spanish, although they may not have the other qualifications. We would not ask that they be fully licensed - but only given a certificate of competency to teach in Spanish." The alternative to this has been an inexcusable failure to minimally communicate with thousands of children who do not speak English well.

Because reading scores and other measurements of pupil achievement, such as the drop-out rate, indicate that the schools are serving least well the large numbers of children of Puerto Rican background, special methods must be devised to meet their needs. Philip Kaplan, Chairman of Community School Board No. 15 in Brooklyn, spoke of how important it was to have bilingual teachers when he was a child in a New York City public school: "I, myself, when I started kindergarten, did not speak a word of English. I just spoke Jewish [Yiddish]. When I started elementary school, the fact that there were teachers who understood Yiddish was a tremendous help. I think that's important to keep in mind....It was a help to me, and to my parents, who came to school to find out my progress, to speak to someone who spoke the same language as we did at that time."

It is estimated that bilingual programs now reach only about one out of every four Spanish-speaking children (and a far lower percentage of Chinese-speaking children). Hector Vazquez, former Board of Education member and Executive Director of the Puerto Rican Forum, estimates that only about 10,000 Puerto Rican children are receiving as much as one period a day in English as a second language. Certificates of competency, or exemptions from some of the normal requirements for native English-speaking candidates, in favor of ability to speak Spanish or Chinese as well as in-service training and other supportive measures, are only some of the possible measures that might help to meet the needs of the bilingual child.

II. BACKGROUND

During the past year the attention of the City Commission on Human Rights has been drawn repeatedly to the employment practices of the New York City public school system. There were individual charges that the practices were in several different respects discriminatory, in effect if not in intent. Moreover, the Board of Education's own ethnic survey of the teaching and supervisory staffs in the New York City public schools revealed lower percentages of Blacks and Puerto Ricans than in virtually any other major urban school district. Only 9.1 percent of the teachers and 3.8 percent of the principals in the system were Black, according to the census, and less than 1 percent of the system's professionals were Puerto Rican. Quite apart from several other indicators of possible failure to offer equal employment opportunity, the percentage figures were unusually low for a profession that has always attracted disproportionately high numbers of minority group people nationally, and for a city where one-third of the population and 60% of the public school children are from minority groups. These and other indications were considered in the atmosphere of tension this controversy was creating in this city. Under its statutory mandate the Commission had to face the fact that in such a situation involving any major private employer, it would have held that serious questions were raised and further investigation would have been required.

On June 7, 1970, Chairman Eleanor Holmes Norton announced that the Commission would

> . . . investigate and cooperate with the Board of Education to determine the exact causes of its poor minority hiring record with the end in view of producing an affirmative hiring program of the kind the Commission has worked out so successfully with private corporations in this City. . . . The Commission's affirmative hiring program has produced amazingly good results from private business -- all working on a voluntary basis with the Commission. Surely, no less can be required of the City's public school system which receives massive public funds and is required to offer equal opportunity to all.

The implications of the school system's employment practices exceed its role as a public agency employing approximately 65,000 professionals, more than almost any other public or private employer in New York City. These professionals are employed in the incomparably important job of educating the children of this city.

The Commission's initial investigation into the school system's employment practices provided convincing evidence of the complexity and the interrelatedness of the issues involved. A fair evaluation of the employment process for teachers and supervisors clearly required extending the concept of the traditional employment process both backward and forward -- to teacher training on the one end and to upgrading or promotion on the other.

Moreover, because of the significant function of the Board of Education's pedagogical employees, a fair evaluation required consideration not only of whether the personnel system affords equal employment opportunity to professionals, but whether it is attracting professionals best equipped to work with and help to educate urban youngsters of every color, creed and origin.

With these requisites in mind, Chairman Norton announced on November 23, 1970 that the Commission would expand its investigation into full-scale public hearings early in 1971

> . . . to determine if the established practices of the school system are fair and make sense in terms of the educational needs of the 1970's. . . . The Commission's experience has been that public hearings are a valuable tool in dealing with complex, controversial problems. . . .

Certainly, a factual, objective, dispassionate, solution-oriented approach to New York City's educational problems was long overdue. As Mrs. Norton said then :

> For some time now, charges have been made back and forth, with all parties assuming a knowledge of the facts, which, the Commission believes, are not at all clearly established. In recent months, the angry rhetorical debate has escalated without any visible movement toward a better understanding of the actual problems of the school system, much less of the solutions. Discussion of public policy surely should take place

> on a firm foundation of factual information. Without this ingredient, fruitless discussion can easily give rise to aimless accusations and counter-accusations, which pose in this instance a grave threat to relations among all groups of New Yorkers.

Thus, the first function of the Commission's public hearings was to gather detailed information on current methods of training, recruiting, selecting, appointing and promoting teachers and supervisors in New York City and, by doing so, to dispel many widely held misconceptions. Included within these broad areas were many more specific matters, such as innovations in teacher training, the relationship between teacher training institutions and the school system, recruitment in the metropolitan area and out-of-town, recruitment through training of paraprofessionals, the relationship between recruitment and the selection process, the value of state certification in the selection process, the role of the Board of Examiners and its relationship to the Board of Education and community school boards, the cost in money and personnel of present selection procedures, the use and validity of written tests, in-service training and promotion, and the use of performance-based criteria in all facets of the employment process.

The second main function of the Commission's public hearings was to gather information about new approaches to the employment of teachers and supervisors being used by other states and by other large urban school districts. Only by having that comparative information available could the New York City approach be evaluated in a meaningful framework.

The hearings were organized to achieve these dual goals. Seventy-one witnesses, representing a wide range of experience and points of view, presented prepared statements and responded to questions from Special Counsel, Professor Paul L. Tractenberg of Rutgers University Law School and from the Commissioners. In addition, public testimony was received during two afternoons and evenings. A complete list of witnesses is attached as Appendix A.

III. THE HEARINGS

A. Format and Witnesses.

The Commission's public hearings were held daily during the week of January 25, 1971, at the New York County Lawyers Association, 14 Vesey Street. To encourage attendance, a day care facility was provided nearby. A live broadcast of the complete hearings was carried on WNYC, the radio station of New York City.

The first major segment of the hearings consisted of testimony from representatives of the New York City school system describing current employment practices from their particular perspectives. During the first day and a half, the hearings took up consecutively the interrelationships among the City Board of Education, the Chancellor's office, the Board of Examiners and community school boards and their staffs; recruitment practices, including special programs directed at recruiting Black and Spanish-speaking candidates; and selection and appointment practices. The witnesses during this segment included Murry Bergtraum and Isaiah Robinson, the President and Vice-President of the City Board of Education; Chancellor Harvey B. Scribner; Chairman Gerturde E. Unser and Jay Greene and Murray Rockowitz, two other members of the Board of Examiners; John J. Theobald, a former Superintendent of Schools; Peter Strauss and Philip Kaplan, chairmen of two community school boards; Edythe Gaines and Andrew Donaldson, two community superintendents; Irving Flinker, a junior high school principal; Wendy Lehrman, an elementary school teacher; and Theodore Lang, until recently Deputy Superintendent in charge of personnel, and a number of his staff members.

The second segment of the hearings consisted of testimony from representatives of organizations actively involved in New York City public education. Each of these witnesses had been asked to evaluate the current employment practices of the school system and to suggest improvements. Witnesses who participated during this day-long segment included Albert Shanker, President of the United Federation

of Teachers; Walter Degnan, President of the Council of Supervisory Associations; Victor Gotbaum, Executive Director of District Council 37, American Federation of State, County and Municipal Employees; Blanche Lewis, President of the United Parents Associations; David Seeley, Director of the Public Education Association; Eugene Callendar, President of the New York Urban Coalition; Hector Vazquez, Executive Director of the Puerto Rican Forum; Louis Nieves, Executive Director of Aspira, Inc.; Rose Falcon, Teacher Coordinator, Parent Leadership Program, United Bronx Parents; and Ira Glasser, Executive Director of the New York Civil Liberties Union.

The third segment of the hearings consisted of a full afternoon of testimony from testing experts about the use and validity of written tests in the employment of teachers and supervisors. The witnesses were Stephen J. Pollak, former Assistant Attorney in charge of the Civil Rights Division of the U.S. Department of Justice; James R. Deneen, Senior Program Director for Teacher Examinations, Educational Testing Service; Richard Barrett, Office of Admissions Services, CUNY; and Robert Thorndike, Professor of Psychology, Teachers College, Columbia University.

The fourth segment of the hearings consisted of testimony from academic and other education experts who evaluated current teacher training, recruitment, selection and promotion practices and discussed alternatives. Witnesses included John H. Fischer, President of Teachers College, Columbia University; Doxey Wilkerson, Chairman of the Department of Curriculum and Instruction, Yeshiva University; Laurence Iannacone, Professor of Education Administration, University of Toronto; Marilyn Gittell, Director of the Institute for Community Studies, Queens College; Lillian Weber, Professor of Education, City College; Judith Rothschild, Director of the Urban Leadership Development Program, School of Continuing Education, New York University; Robert A. Dentler, Director of the Center for Urban Education; and Harold Haizlip, Headmaster of the New Lincoln School.

The fifth and last segment, on the final day of the hearings, consisted of testimony about developments in state certification and in employment practices of other large urban school districts. Witnesses included officials of the U.S. Office of Education, the National Education Association, and state education departments of four states. Ewald B. Nyquist, New York State Commissioner of Education submitted a statement. Also participating were Joseph Manch, Superintendent of Schools of Buffalo, and Aubrey McCutcheon, Deputy Superintendent in charge of staff relations of the Detroit school system.

During the more than ten hours of public testimony 69 witnesses with broad experience in New York City educational and human rights matters were heard. They included a former member of the Board of Education, community superintendents, community school board members, past and present principals and teachers, parents and students, representatives of education and human rights organizations and many other concerned citizens. Organizations that testified included the Citizens Committee for Children, United Black Caucus of Teachers, the Queens Jewish Community Council, Inc., the Central Brooklyn Neighborhood College and Education Action Program, the Italian-American Civil Rights League, and the New York Chinese Community Council.

B. Tone of the Hearings.

In recent years public discussion of New York City education issues often has been characterized by outright rancor and irrationality. The Commission's hearings must be viewed against this backdrop, for the contrast was extraordinary. Virtually without exception, the witnesses made careful, factual statements and responded fully and openly to questions. For example, Jay Greene, a member of the Board of Examiners, responded to questions for well over an hour, as did Albert Shanker, President of the UFT. Not a single disruption of any kind occurred. Every witness was treated with courtesy by the audience, whatever point of view his or her statement reflected.

This high level of decorum, together with the thoughtful preparation of the entire range of witnesses, permitted the hearings to meet their dual goals of developing detailed information about current New York City practices and about innovative alternatives.

Nat Hentoff, a well-known journalist specializing in education matters, writing about the hearings in the Village Voice on February 4, 1971, said :

> For five days last week, there was an extraordinary revealing, multi-layered, continuing news story in this city. Its large, highly variegated cast constituted as broad a cross-section of this city as I have ever heard in one place. . . . I thought I knew quite a lot about the schools . . . But I really went to school last week while listening to those hearings. I should note that these were not dry, academic reports alternating with defiant rhetoric. This was absorbing information and analysis on a subject that is more important to more people in this city than any other - the education of their children . . . /This/was, in my memory, the single most useful set of public hearings in this city.

C. Summary of Testimony.

Summarizing five days and almost 2,000 pages of testimony requires a broad brush. Fortunately, in a number of areas a consensus emerged, at least about goals. This section is organized into three subsections summarizing the testimony about : (1) current New York City employment practices; (2) criticisms and defenses of the current system; and (3) alternatives suggested. Each subsection defines the degree of consensus reached and the issues where differences of opinion exist.

1. The Current System. In theory there is a tripartite system for employing teachers and supervisors in this city.

The Office of Personnel, as the arm of the Chancellor and City Board of Education, is responsible for defining eligibility requirements, recruiting qualified candidates, providing the Board of Examiners with analyses of duties on the basis of which examinations are constructed, and instructing the Board of Examiners to give examinations in particular licenses at particular times.

The Board of Examiners is responsible for designing and administering examinations in most of the 1,200 teaching and supervisory licenses, and for compiling eligible lists of successful candidates (ranked lists for teaching licenses and qualifying lists for supervisory licenses). Although the Board of Examiners is a part of the Board of Education for many purposes, it is required by statute to carry out its examination and eligible list functions in an independent manner. The New York City Board of Examiners is the only autonomous local examining body in New York State and one of only a handful in the country. Buffalo was the only other school district in New York State expressly required by statute to have a local examination, but in 1968 the requirement was eliminated by the Legislature for most supervisory positions. But, even in Buffalo, the examination process is not administered by an independent board of examiners, but rather by the Office of the Superintendent of Schools.

The community school boards - for most elementary, intermediate and junior high schools - and the City Board - for senior high and special schools - generally appoint teachers and supervisors from eligible lists, assign them to schools, supervise their activities and grant them tenure.

This division of personnel authority into three discrete areas is both theoretical and greatly oversimplified, as testimony at the hearings made clear. The divisions of authority are in practice less precise and the areas of overlap more extensive. A few examples should suffice.

In his testimony Dr. Lang stated that during his five and one-half years as Deputy Superintendent in charge of the Office of Personnel, no analyses of duties were prepared for any teaching licenses. Dr. Greene confirmed that the Board of Examiners has not received such analyses for teaching licenses and that, consequently, the Board has had to rely upon characteristics described in assorted Board of Education publications, state certification requirements, Board of Education eligibility requirements, and panels of "experts" convened in advance of each examination.

Theoretically, the Board of Examiners has independence in constructing and administering examinations. However, there is a substantial degree of interdependence with other parts of the school system. Much of the actual work of constructing and administering examinations is done by examination assistants. They are, for the most part, teachers and supervisors in the New York City school system selected by the Board of Examiners to assist it with particular examinations. In return, they are paid at the rate of almost $14.00 per hour. The State Education Law expressly provides that no one can serve as an examination assistant unless approved by the Chancellor or a community superintendent. Yet Chancellor Scribner testified that he has merely approved lists of names sent to him by the Board of Examiners.

a. Training.

Over 90% of the teachers in the New York City public school system receive their training in a New York City college; 65% of them, at the City University of New York, according to Dr. Greene of the Board of Examiners. The most usual kind of education that candidates for teaching licenses present is a Baccalaureate degree which includes 24 semester hours in the professional study of education and a college-supervised student-teaching experience. In the last few years, an "Alternative B" examination has been offered to candidates who have Baccalaureate degrees with only 12 semester hours in education (the remaining 12 to be completed within five years).

The Board of Education, at a time when there was a teacher shortage, set up several programs in conjunction with City University for candidates who wanted to take this alternative route to licensure. One was the Intensive Teacher Training Program (ITTP) which allowed liberal arts graduates to take the required 12 hours of education credits in an intensive summer program. Another, Training Experience for New Elementary Teachers (TENET), was a year-long program for liberal arts graduates who needed education credits or the student-teaching experience. A third, Teacher Education Masters Program for Urban Schools (TEMPUS), is the Master's Degree component of TENET.

Candidates who want to take the examination for New York City licenses are also eligible if they have been permanently certified by New York State in the appropriate field. Educational requirements for state certification are somewhat higher than for licensing by the city.

The school system is directly involved only in limited ways in the training of teachers. Dr. Greene testified that the Board of Examiners keeps in touch with schools of education through an Advisory Council of Colleges in Teacher Education. However, according to testimony received at the hearings, the school system only minimally takes into account the college record of individual teaching candidates.

The most direct link between the school system and the training of teachers is in the area of student teaching and post-licensing training. Students who major in education typically practice-teach in their senior year, if possible in the school district where they hope to be employed. A number of witnesses commented, however, that neither the colleges nor the school system had given this aspect of training enough emphasis to prepare students adequately for teaching in the public schools.

Former School Superintendent John Theobald made this comment :

> I don't believe there has been nearly adequate cooperation between the system and the colleges. This works both ways. The system, for the most part, has been negative on college students coming in for student teaching. When I say 'negative,' they have a system - they had in my day . . . I think they still have it, where it is the principal's judgment whether or not he wanted student teachers or not. Colleges in general tried to put their youngsters into the 'better schools,' and the net result was, we didn't have anybody who knew how to work in a ghetto school.

Professor James Shields of City College's Education Department had this to say :

> . . . what happens now is a student takes for instance, in most of the city universities, 12 hours of courses in the sociology of education, psychology of learning, child development and adolescent development, and only after that experience are they allowed to have an experience in a school of any significance. But what they have been doing recently is providing two hours here and there haphazardly and calling it field work. And this is ridiculous.

The school system does provide new teachers with a training program during their first year. This is, in fact, mandated by the agreement with the UFT. The contract requires : 1) the principal to direct the new teacher to "devote a reasonable number of his preparation periods, not to exceed twenty, to observing classes conducted by more experienced teachers, or to consulting others familiar with classroom problems;"

and 2) the Superintendent to direct "that teacher to participate in an after-school training program of not more than two hours per week and extending over a period of not more than fourteen weeks in each of the two terms of the school year, designed to heighten the capabilities of inexperienced teachers."

Dr. Shields, who has been evaluating in-service teacher training programs for the State Education Department, felt, however, that this training program was not effective. "The union mandates a 2-hour-a-week workshop on Monday afternoons or so for beginning teachers. And this has been a total failure. It seems to have nothing to do with anything. I have spoken to new teachers around the city about it, and mostly they try not to go. As a matter of fact, many of them just stop going."

Two other programs of the Board of Education have training aspects. One is the paraprofessional career development program, which provides paraprofessionals with an opportunity to acquire sufficient college credits to eventually qualify to take examinations for teaching licenses while developing classroom skills in their work as paraprofessionals. The other is the Program for Oral and Written English Reinforcement (POWER), a series of courses for applicants who fail the oral or written parts of the teaching examinations and need remedial work and for those applicants for whom English is a second language.

Aside from these direct connections with the training of prospective teachers, the school system, by virtue of the fact that it establishes eligibility requirements for teaching candidates, has an important indirect connection. For, clearly, any teacher training institution which sends a substantial number of its graduates to the New York City public schools must be influenced by the character of these requirements and must gear its curriculum to them.

b. Recruiting.

The Division of Recruitment, Training and Development of the Office of Personnel has primary responsibility for identifying and recruiting sufficient numbers of qualified candidates. Overall, the recruiting effort has increasingly been able to fill all vacancies with regularly licensed personnel. Four or five years ago, one-third of all teaching positions were filled by persons with substitute licenses. That figure has declined to 12-15% and the Board of Education has announced it will not license any more permanent substitutes (although it will have a category called per diem substitutes). But consistently the vast bulk of recruits have come from the New York metropolitan area.

In recent years recruitment efforts outside the New York metropolitan area and those aimed specifically at Black and Spanish-speaking candidates have increased dramatically. For example, 75% of the total recruiting budget last year was spent on out-of-town recruiting. Moreover, almost $500,000 has been allocated to the Board of Education/UFT Joint Recruitment Program which will consist largely of out-of-town recruitment. Trips are made regularly to Puerto Rico and to predominantly Black southern colleges. Last year, 81% of the Division's public relations and advertising budget was spent on media directed toward Black and Spanish-speaking audiences.

Despite this emphasis, most teachers still come from the metropolitan area, with about 65% from the City University of New York alone. And this effort combined has resulted in only negligible increases in Black and Puerto Rican professionals in the school system, with New York remaining far below other large urban school districts.

c. Selection.

In the public mind, selection of teachers and supervisors in the New York City school system

is regarded as the domain of the Board of Examiners. That has been only partially true since it is the Board of Education which establishes eligibility requirements to be met before a candidate can begin the examination process. At the other end of the process, the body which appoints the candidate (the City Board or community boards for schools under their respective jurisdictions) has discretion in making the initial appointment from eligible lists, subject to the requirement that appointment to teaching positions be made generally from the top three candidates on ranked lists. By virtue of the 1969 Decentralization Law, eligible lists for all supervisory positions are qualifying rather than ranked. Therefore, anyone whose name is on the list can be appointed. The appointing body also has discretion as to the granting of tenure, which is a later part of the selection process.

Moreover, other provisions of the Decentralization Law authorize community boards in certain circumstances to appoint professional personnel outside the framework of the Board of Examiners system. Community boards can select their community superintendents on the basis of state certification. And when teaching vacancies occur in schools which are in the lowest 45 percentile on city-wide reading tests (lowest 40 percentile until September, 1971), the community boards can appoint teachers from October 1 to May 1 on the basis of their performance on the National Teacher Examination. Teachers may also be selected from a regular ranked list but without regard to their rank, or from an unranked list based on a special qualifying examination given by the Board of Examiners.

Despite these modifications, the local examination is still at the heart of the selection process. And the Board of Examiners, as the judge of both content and performance in relation to examinations, continues to be a central force in the selection of teachers and supervisors.

The New York State Constitution requires that appointments to the civil service, including teaching and supervisory positions, "be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive. . . ." The State Education Law permits each city school board in the State except Buffalo and New York City to make appointments based on state certification

and such additional or higher qualifications as it prescribes. The "merit and fitness" requirement of the State Constitution may be fulfilled by the local school board's determination that a candidate possesses the necessary qualifications prescribed by the State. And each school board has discretion to decide the practicability of determining merit and fitness by examination, competitive or non-competitive. Only in New York City and Buffalo has the Legislature determined that competitive or qualifying examinations for most teaching and supervisory positions are practicable on a city-wide basis, and only in New York City has it required a Board of Examiners.

The examinations conducted by the Board of Examiners typically consist of a written test with short-answer and essay or written English questions, an interview test, a review of record, and a physical-medical examination. In some cases there may also be a performance component.

But, according to the courts, none of these aspects is required by the State Constitution or the State Education Law. The requisite examination may consist of an unassembled examination -- perhaps just a review of record. And an unassembled examination can be competitive as well as qualifying. Indeed, the Board of Examiners does create some eligible lists on the basis of unassembled examinations. Presumably it has the discretion to do so in all cases.

According to its Chairman, Gertrude E. Unser, the Board of Examiners conducts an average of 200 different examinations annually, covering as many as 50,000 applicants. There are about 1,200 licenses overall in the school system.

A sample of results supplied by the Board of Examiners indicates that between 75% and 85% of the candidates who take examinations in teaching licenses are ultimately licensed. As that sample would suggest, the Board of Examiners sees their current examinations as having a limited purpose - "to ascertain whether the applicants have the necessary knowledge, know-how, background, record, and health and observable personality factors required of a beginning teacher."

To carry out its responsibilities, the Board of Examiners has a full-time staff of 170. Almost all the full-time professional staff are teachers and supervisors assigned year to year by the Chancellor. There is also a roster of approximately 4,500 persons who are called upon as needed to prepare, conduct and rate examinations. Approximately three-fourths of these temporary examination assistants are also employed full-time as teachers and supervisors in the New York City school system.

None of the Board's personnel, full-time or temporary, except the four members of the Board of Examiners, is required, as a condition of employment, to have training or expertise in personnel administration or test construction (although some do have some such training or expertise). In fact, there are no formal requirements of any kind and no formal screening procedures, despite requests by the Board of Examiners to the Board of Education to establish such procedures. The four members of the Board, on the other hand, take Civil Service examinations which include a written test designed to evaluate, among other things, technical competence "in the fields of education, testing and research."

The Board of Examiners' budget for 1970-71, its 72nd year, was $3,528,211. A total of $3,466,911 was allocated to personnel costs and $1,911,000 of that amount to compensation of temporary examination assistants. The allocation for research personnel is, according to Dr. Greene, $40,000.

d. Accountability and Promotion.

In recent months, accountability of school systems and their personnel has become a widely-discussed national issue. The New York City school system has entered into a contract with the Educational Testing Service under which a design for educational accountability will be developed. The framework proposed by ETS makes clear that this design will involve "joint accountability;" that is, the collective responsibility of a school's entire staff rather than the responsibility of individual teachers and supervisors. Although this concept was outside the scope of the Commission's hearings, the issue of tenure and promotion was a concern of many witnesses.

Teachers and supervisors have generally served a three year probationary period. (A recently enacted bill increases it to five years.) Only after they have successfully completed the probationary period can they be given tenure. If they are found unsatisfactory during that probationary period, they can be released at the end of a school year without the elaborate panoply of appeals available to a tenured professional (although some due process safeguards are available). Success during probation is measured principally by periodic supervisors' ratings.

The rating system is designed to incorporate performance on the job into the selection process. But the Commission heard much testimony from educators, officials of the Board of Education, community board members, community superintendents, principals and others to the effect that the probationary period actually has little meaning. Probationers have been routinely given satisfactory ratings by their supervisors unless they demonstrated some extraordinary deficiency. Similarly, tenure has been granted with relatively few exceptions on a mass basis. The Superintendent of Schools (now the Office of the Chancellor) has historically recommended that tenure be granted to the hundreds or even thousands of names on a list and the Board of Education, without any review of individual records, has approved.

Some witnesses attributed the routineness of this process to the impact of the Board of Examiners. According to them, the examination has assumed such awesome proportions in the system that once a candidate passes it there is a strong presumption that he has met the major qualifications for a permanent position in the school system.

Decentralization appears to be changing this situation. Now the 31 community boards grant tenure to teachers and supervisors under their jurisdiction. The number of probationers coming before each community board is far more manageable than the thousands which come before the City Board toward the end of each school year. Review of individual records is feasible and the community superintendent, who now recommends probationers for tenure, can be expected to have first-hand

insights to provide. Recommendations of parent-teacher associations and other community organizations interested in the schools are likely to be considered.

A number of community boards have already announced that they are making greater use of the probationary period to screen teachers and supervisors for competency as well as personal characteristics. As a central part of this effort, these boards will expect supervisors' ratings to be more thoughtful and less automatic. Philip Kaplan, Chairman of Community School Board No. 15 said,

> . . . /If/ we start holding the principals accountable for the progress in their schools, they will start weeding out those teachers who cannot teach and meet the levels that they set.

The effective use of the rating system should be important for promotions as well. Most supervisors come from within the New York City school system. To be eligible for a supervisory examination, an applicant generally must have served a specified number of years as a teacher and, perhaps, as a lower level supervisor as well. For some recent examinations, the prior service requirement has been reduced, but even in those cases it is still substantial. Thus, a wealth of information could be available about actual performance of most candidates for supervisory positions. Nevertheless, eligibility for promotion to most supervisory positions is heavily dependent upon the candidate's success on a centrally administered written test and oral interview.

Finally, the rating system is pertinent to accountability of tenured personnel. One of the statutory grounds for removal is incompetency. A careful and detailed rating system could provide the best basis for assessing competency of tenured personnel as well as probationers and candidates for promotion.

2. Criticisms and Defenses of the Current System. A striking consensus emerged from testimony at the hearings. Substantial improvements are necessary in all facets of the current employment system. This consensus was the more noteworthy because it included

those principally responsible for the current system and those principally affected by it. For example, in the area of test validity such diverse witnesses as Jay Greene of the Board of Examiners; Albert Shanker, President of the UFT; James Deneen of the Educational Testing Service; Community Superintendents Edythe Gaines and Andrew Donaldson; and the Principal of George Gershwin Junior High School, Irving Flinker, agreed that significant improvements are necessary.

The importance of this kind of consensus in many of the areas under investigation cannot be overestimated. These were not hearings dominated by emotional, unsupported, rhetorical criticisms directed at popular scapegoats. On the contrary, the criticism was in the main careful and factual, and it was offered by many most familiar with the school system.

The broad dimensions of the problem became clear with each succeeding day of testimony. Will the current system serve adequately in the future if it is modernized? Or is a fundamental restructuring necessary? Differences of opinion naturally arose over what kinds of changes are needed. This section of the report consider the criticisms and defenses of all facetsof the current system, especially as they bear upon this basic question.

a. Training.

The main criticisms voiced were of two kinds. The first was that successful completion of a teacher training program, even in prestigious institutions, does not guarantee that every graduate possesses minimum competency in his subject matter field or in spoken or written English. In supporting this criticism, Dr. Greene cited a "chamber of horrors" culled from examinations conducted by the Board of Examiners. He reported that :

> You would be amazed to see some of the deficiencies that applicants who have degrees and . . . Master's degrees have in their own subject, written English and literacy. Unless you are familiar with the results that cross your desk it is almost difficult to believe that this is so. There are applicants who don't possess the knowledge of mathematics of an average 13 year old youngster in our junior high schools. . . . In written English there are some amazing examples of illiteracy.

Further in his testimony Dr. Greene said:

> I think City University is in the forefront of teacher education, but that doesn't mean that all their young people, with their host of faculty, host of problems, that they can give the sort of guarantee, the sort of impartiality and selection for public employment that we need.

This criticism was echoed by Mr. Shanker when he said:

> ...a good many teachers on a national basis barely manage to get out of teachers college after they were pushed out of every other institution. Colleges are notorious for passing everybody. It is precisely because of the low standards maintained by the colleges and institutions that it is so important for the government to maintain a standard of entry.

However, John Fischer, President of Columbia Teachers College, generally rejected these criticisms.

> ... [D]o I think that the New York City higher education institutions can perform the screening function themselves? The answer is that I do. And I believe that if we assume that the possession of a Bachelor's degree, or an advanced degree, is sufficient indication that the holder of the degree has met certain minimum requirements, we are making an entirely safe assumption.

Dr. Fischer agreed that "our universities and colleges, being humanly managed institutions, fall somewhat this side of heavenly perfection." But, in his opinion, reliance on a personnel system like the Board of Examiners, which he characterized as "quite objective but of highly questionable validity," was "much the greater and more serious error."

In fact, Dr. Fischer questioned whether the New York City school system's employment processes might not be failing to take advantage of information available about candidates through their teacher training institutions. Each of these institutions keeps dossiers about its students. Dr. Greene had testified that only minimal use was made of such information. Dr. Fischer responded that:

> ...it seems to me that any employing agency can obtain from a college or university, or from other sources, the information that it requires to separate incompetent or undesirable people from those who should be employed.

The second major criticism of teacher training that emerged was that, even if such training provides minimum subject matter competency, it does not adequately equip the young graduate to go into the classroom. This criticism was repeatedly heard, especially as to the so-called "difficult" urban schools.

Dr. Shields, in discussing the teacher credentialing function assumed by American colleges, reported:

> If you want to become a teacher you must present a Bachelor's degree and some evidence of having taken courses. Now, in teacher education .... no one really expects that what goes on in that institution that provides for credentialing .... has anything to do with performance on the job.

Dr. Fischer made a related observation:

> ...academic training, though essential,is not sufficient. Understanding of the people with whom one works, understanding of the situations from which those people come, is at least equal in importance to possession of the traditional types of academic and systematized professional preparation.

Whether teacher training institutions or the employing school district should be responsible for developing these non-academic skills, was a matter on which witness differed. Some, like Drs. Fischer, Theobald, Wilkerson and Dentler, believe this development should come principally during a greatly improved probationary period. According to this view, during probation the new teacher or supervisor should be carefully observed and assisted by his superiors to insure a meaningful on-the-job learning experience. At the same time, of course, his potential should be evaluated. At the conclusion of this two-way street, whether one calls it probation, provisional licensure or internship, an informed decision can be made about more permanent status.

Other witnesses, like Dr. Shields and Dr. Lillian Weber, also of City College, testified that teacher training institutions should entirely redesign their curricula in an effort to make them more relevant to effective teaching. Dr. Shields is himself involved in an experimental program which may influence the future direction of teacher training. This four-year program virtually does away with traditional course work. Instead, students spend most of their time in the field working with children. As Dr. Shields put it, "...instead of taking a course in child development, they work with children and watch their development...."

This approach may also attract more minority group students to teacher training institutions. Mr. Bergtraum expressed the view that "many minority college students, seeing the formalistic system of those courses /in schools of education/, are turned off and do not go into teaching because they feel immediately that the total curricular structure .... doesn't relate to what they are and to where they come from and to what they want to do."

b. Recruiting.

Not many years ago the main criticism about the Board of Education's recruiting practices was their failure to provide enough

qualified candidates to fill all the regular teaching positions. As recently as the mid-sixties, substitutes filled about one-third of these positions. This is no longer the case although there are still shortages in some licenses.

Today the major problem is the recruitment of enough Black and Spanish-speaking teachers and supervisors. Despite substantially increased efforts during the past six or seven years, according to Dr. Theodore H. Lang, Deputy Superintendent of Schools in charge of personnel for most of this period:

> ...results have been very disappointing to those of us who have exerted so much effort to advance this objective .... Insofar as Blacks are concerned the percentage of Blacks [teaching] in the system increased from 8.2% in 1963 to 8.8% in 1966 to 9.1% in 1969. This is disappointing indeed .... We made an ethnic count of the supervisory staff only in the years 1966 and 1969. Lumping together appointed supervisors and acting supervisors, we still have a very disappointing figure of approximately 4% Black supervisors in 1966 and only approximately 8% in 1969....I caution you that in these figures the Blacks are more heavily represented in the acting posts percentage-wise than they are in the appointed posts.

The statistics regarding Puerto Rican and other Spanish-speaking teachers and supervisors are even more discouraging, according to Hector Vazquez, Director of the Puerto Rican Forum. "Puerto Ricans hold less than one percent of the professional positions -- teachers, guidance counselors, Bureau of Child Guidance, assistant principals

and department chairmen." Meanwhile, the number of Puerto Rican and other Spanish-speaking students in the New York City public schools is fast approaching 300,000, or 25% of the total pupil population. Many of these students have language problems which make it critically important that there be Spanish-speaking professionals involved in their education.

Dr. Phyllis Wallace, Vice-President of the Metropolitan Applied Research Center, put the New York City minority group figures into a national perspective. She testified that:

> When the recruitment and promotion of minority group teachers and supervisory staff in the top five cities in the United States are compared, it becomes apparent that New York City's record is, overall, the poorest ....In Chicago, Detroit and Philadelphia, the percentage of minority group teachers is at least three and one-half times as great as New York City. Los Angeles, next lowest to New York City, has almost twice the percentage of Black and Spanish-speaking teachers as New York City.

Because substantial numbers of full-time substitutes were included in the New York City statistics, the discrepancy is of course even greater for regularly licensed teachers. According to Dr. Wallace, New York City also has the poorest record among the largest cities in terms of the percentage of minority group personnel in supervisory positions and the ratio of minority group teachers and principals to minority group students.

How much of the problem rests with recruiting as opposed to selection? There are no statistics readily available. The Office of Personnel and the Board of Examiners are, for the first time, compiling data about the pass-fail performance of Black and Spanish-speaking candidates on their examinations. The compilation was required by a federal court in connection with a suit brought by the NAACP Legal Defense and

Educational Fund, Inc., challenging the legality of the school system's supervisory examinations.

Absent this kind of data, one can only look to the reactions of those who have had first-hand contact with school system recruiting efforts. Dr. Lang, in considering reasons for the small percentages of Blacks and Puerto Ricans in the system, said, "We do not know the impact of our selection system in New York City as compared with the systems of other sections of the country." He testified that in his view the factors which affect the recruiting effort are small percentages of Black and Puerto Rican college graduates and intense competition for them from private and public employers. Indeed, scarcity of qualified Black and Puerto Rican applicants was the principal defense of the system's recruiting efforts offered at the hearings. And, it was said, the problem is in the process of curing itself.

Programs like City University's open enrollment program, it was predicted, will significantly increase the percentages of Black and Puerto Rican college graduates. This was emphasized not only by Dr. Lang but by others, such as Albert Shanker and Walter Degnan, who basically defended the current system.

Is it then just a matter of time and patience? Will the system really cure itself? Mr. Shanker suggested it would:

> We know that we live in a society in which the number of years which one has been in the country, the amount of wealth or poverty that a particular group has, that these are factors in terms of what particular jobs in this society a group gets to; and we know ... that as various groups move into the cities, the first thing they start doing in their move towards upward mobility is to buy small businesses, the candy store owners, etc.; and that

their children, who first go to college, then go into professions like teaching and then the teachers go into other professions; and, therefore, it has almost always been that the teachers in urban school systems represented predominantly the immigrants of the previous generation who were teaching the children of the newer immigrants.

So, when the Irish came into the system, they were taught by WASPS; and the Irish then taught the Jews; and the Jews, the Italians; and I suppose the next group of Black and Puerto Rican teachers and administrators will be teaching the new affluent grape-pickers, represented by Cesar Chavez, when they move up from the lowest to the next rung.

But even if there is sufficient time and patience (Dr. Lang suggested we should allow the various positive forces "to mature over the next five years without pressing for immediate results in a one or two year period of time"), many witnesses predicted that the system will not cure itself.

Mrs. Daisy Hicks, Director of the Board of Education's out-of-town recruitment program, said that out-of-town recruiting has not succeeded. In her words, "If you do not get what you are going after, it certainly reflects on it [out-of-town recruitment]." Mrs. Hicks attributed her difficulties to several factors: (1) a cumbersome, confusing selection process; (2) uncertainty about New York City's commitment to minority group professionals; and (3) the lack of guidelines with respect to professional staff integration. Concerning the last point, Mrs. Hicks said:

> I am very happy to see that these hearings are being held because I hope out of this will come some guidelines for most of us who are involved in recruiting to follow. Although the New York City school system has been a leader in the field of education...I do not feel that this same leadership will

> be shown in the area of integration, regardless of the procedures now in use by the Board of Examiners or the NTE, unless guidelines are spelled out for New York .... The federal government is fully aware that very few businesses or institutions have adopted fair employment policies in hiring and firing unless a watchful eye was focused on the situation. In the case of the New York City Board of Education, assistance must be given ....[U]nless we get some guidelines,I just don't feel we are going to meet with the success that we are trying to achieve.

Mrs. Hicks did not, of course, attribute the inadequacies of minority group recruiting to malicious motives or lack of awareness or concern. She pointed instead to systemic or institutional problems. This viewpoint was confirmed by Mr. James Watkins, a teacher in the New York City school system and an expert in teacher recruitment. Mr. Watkins based his observations on his personal participation in Board of Education out-of-town recruiting efforts.

The response of Dr. Phyllis Wallace to Special Counsel also points to the importance of a clear-cut and system-wide commitment.

> Mr. Tractenberg: Does that suggest that recruitment is one of the main areas in which this school system has fallen down in relation to the others that you have mentioned in your study?
>
> Dr. Wallace: I think that it's clear. All of the cities that we have examined pointed out that they had deliberately introduced vigorous recruitment procedures. And, in fact, they would laugh when the question would come up about the difficulties of New York City in finding qualified Black and Puerto Rican graduates.

c. Selection.

The selection phase is at the heart of the employment process, and, in the public mind, the Board of Examiners is synonymous with selection. Consequently, the Board has attracted the most detailed scrutiny and has been the subject of the most elaborate public criticism. Perhaps because of this, there has been substantial agreement about the need for major changes in the Board of Examiners and its procedures.

Early in his prepared statement, Dr. Greene of the Board of Examiners listed fifteen significant changes effected by the Board in recent years. Both he and Chairman Unser of the Board of Examiners conceded that many additional changes should be made. But, they argued, before the entire system is dismantled, its critics should establish that the alternatives being proposed will actually work better than the current system.

It is not enough to find fault with the current system, said Dr. Greene, because:

> We're naturally in the position of being a target. I know of no umpire in a baseball game who is popular per se .... [O]ur job is such, we can't be very popular, we have to be attacked and criticized because we are making important decisions to the best of our ability. We can't be everybody's friend.

This defense did not persuade the bulk of the witnesses, who believed a process of gradual change was insufficient at this stage. Of the 140 witnesses, most urged immediate abolition of the Board of Examiners, at least in its current quasi-independent form. Those who felt it might be continued recommended restructuring so it could become a service agency of the City Board and community boards rather than the ultimate decision-maker on eligibility for appointment. Only eight witnesses, including members of the Board of Examiners, favored retention of the Board in substantially its current form.

Because of the comprehensiveness of the testimony received in this area, this section is organized around specific topics with a summary of the arguments pro and con on each issue.

(i) Outmoded.

Many witnesses testified that, although the Board of Examiners and its elaborate formal examination process may have served an important function in former years, it had ceased to do so.

Chancellor Scribner faulted "a system of licensing which, however useful it has been in helping to eliminate a spoils system since creation of the Board of Examiners more than 70 years ago, is now antiquated, outmoded and inconsistent with both contemporary educational requirements and the concept of decentralized schools."

A similar view was expressed by Irving Flinker, Principal of George Gershwin Junior High School:

> In industry, when a corporation president finds that his machinery is outdated and uneconomical, he is quick to change that machinery so that it is efficient and brings in the dividends. Certainly we can do no less for our children .... The conditions of labor supply and the children's needs at the turn of the century were far different from those prevailing today. The size of our system, current state certification standards, decentralized control and the special needs of inner-city children require a re-evaluation of our teacher selecting system.

Former Superintendent of Schools Theobald testified further as to differences in the historical situation under which the Board of Examiners was

created and the current situation in the city's public schools. In sketching a brief history of the development of the current system, he testified that at the time of the creation of the Board of Examiners the requirements to teach consisted of one year of teacher training school beyond high school. According to Dr. Theobald, the situation is materially different now.

> I think we are talking about a different kind of a teacher world .... Right now we have moved teacher requirements up to a Masters Degree, temporary certificate with a Baccalaureate Degree and some ten or twelve credits in teacher education. This is far beyond what we had when the system started and the Board of Examiners [was created]. We measure in our teacher examination pretty much the same things that youngsters supposedly learned at college .... I would like to see somebody make a correlation study between our examination in New York City and college grades ... and I think you will find the examination was not testing anything new.

In response to this criticism, the members of the Board of Examiners contended that the examination system has been substantially modernized already and can be further changed as conditions require. Dr. Greene testified that, "So far as our Board of Examiners' procedures are concerned, unfortunately many individuals and persons who have formed judgments and even those who testified here are expressed judgments that are based upon the Board of Examiners' selection procedures of ten, twenty, or thirty years ago."

On the other hand, Chairman Unser noted that some of the basic conditions which prompted the Legislature to create a Board of Examiners still exist. She said:

> Can anyone seriously believe that influence, patronage, raiding the public treasury, the desire for power are any the less operative today than they were in that time /when the Board of Examiners was established/? If you think that, just read the daily press.

(ii) Delay and Deterrence.

Many witnesses criticized the Board of Examiners for long delays in promulgating eligible lists that discourage many applicants from applying and cause some who have applied to accept jobs elsewhere.

This is a major problem for those who recruit for the Board of Education and community boards. In discussing the UFT/Board of Education Joint Recruitment Program, Mrs. Daisy Hicks indicated that 1,000 minority group applicants had been identified but were still far from actually getting into the school system. The examination process and its delays cause serious problems. Mrs. Hicks testified that although written tests in some licenses were given on the campuses by examiners between January and April, the eligible lists are not expected to be promulgated until September 1. When asked whether that meant applicants interviewed and tested during that period could not be offered positions until September, Mrs. Hicks said :

> Well, I have hopes. Now I can't predict what they [the Board of Examiners] are going to do, but . . . [t]his type of an examination they . . . are supposed to give . . . priority . . . [s]o you and I can just hope.

Aside from the delays, Mrs. Hicks testified that the examination process serves as a deterrent because so many applicants are confused by the procedures. This is especially

true now that the National Teacher Examination is accepted in lieu of the New York City written test in some licenses and under certain circumstances. The Board of Examiners gives its own written test on campuses in a limited number of licenses, but other applicants must still come to New York City to take the written test.

James Watkins, who also participated in the Joint Recruitment Program, seconded Mrs. Hicks' views. According to him, it has been difficult to move minority group applicants recruited by the program through the selection mechanism.

> Mr. Watkins: Out of the people that we recruited last year, there were something like 124 people that I was acquainted with. There were 120 Blacks, four whites and by September 1st the Board of Examiners had finally recommended for licenses three whites.
>
> Mr. Tractenberg: When had you interviewed them?
>
> Mr. Watkins: Well, some of them were interviewed back in March and April.
>
> Mr. Tractenberg: Did they take the examination on the campuses?
>
> Mr. Watkins: Yes, they did.

Mr. Watkins testified that the form of the examination was another deterrent.

> . . . You are sitting there and I am examining you with respect to a teaching position and this is another examiner over here and we are firing questions at you like in a third degree. Many of

> the teachers will get up and walk out for they would not want to be subjected to this.

The task of assigning teachers to classrooms, as well as recruiting them, is made more difficult by the length of time it takes to promulgate eligible lists. According to Dr. Lang, it takes from six to eight months to bring out teachers' lists and longer for supervisors' lists. "It is a problem when the lists are not available when needed. Of course, the Board of Examiners will always tell me that they are working very, very hard . . . ."

If vacancies cannot be filled by regularly licensed teachers, per diem certificates can be issued within a few days and the holders hired to fill in. Of course, in many cases, these are the very people who have not yet been found eligible for regular licenses.

All of this creates problems for school administrators, according to several who testified. Irving Flinker described the impact on a principal :

> The Board of Examiners sets up such a barrier between teacher applicant and schools to discourage the candidates from taking the test and to frustrate the school principals who have uncovered positions. Early in September, 1969, hundreds of teachers stormed the corridors of the Examiners' offices protesting the delay in processing the July 3rd examinations. Aware of this situation, many principals nominated these qualified applicants for per diem certificates to fill their vacancies about five days before school opened. Because of an inefficient system, tied in knots by red tape, principals waited from one to two weeks to fill vacancies with these teachers who had qualified three months earlier for the jobs. In the meantime, classes went uncovered. Results of the September, 1969 examinations were still not available by the middle of January, 1970. When a principal asks for an explanation, he is told that more applicants took the test than were

> expected, and that the processing took a long time. In my school a substitute teacher took the regular teacher's examination in French in November, 1968, but was not informed of passing until January 20, 1970. The processing of examinations is so cumbersome and confused that one regular examination is given before the results of the previous test are released. For example, the same applicants who took the industrial arts examination or the high school mathematics examination in October, 1969, sat for these tests again in January, 1970, because the processing of the first tests was incomplete. When a system of teacher selection requires needless second testing, the symptoms of disintegration are clear. There is evident neither consideration of applicants' morale nor regard for taxpayers' money. The result of such an uncoordinated procedure, so frustrating to teacher applicants, is to impede the natural flow of graduate students into the city's schools. . . .

In response to such charges, the Board of Examiners offered several defenses. Of the changes in the Board's procedures enumerated by Dr. Greene, two relate to problems of delay.

> There was a time when an examination for a regular license took a year, sometimes two years, and that was unconscionable . . . . But, there has been a speed up in the processing. For example, 6,000 or so students who are lower seniors will take our common branches examination in November. The list will come out in March or early April. That's four months for the processing of 6,000 applicants . . . . I don 't know any other examining body in the country or possibly in the world that can match a record of speed and a record of such comprehensiveness to that extent.

Thus in addition to speedier processing, giving examinations to "lower seniors" so that the results may be available before they graduate is a second recent innovation made by the Board of Examiners, according to Dr. Greene. Previously, only

graduates could take the examinations and this had an obvious deterrent effect, since near-by school systems without examination processes could offer positions earlier. Even under the new system, however, apparently only 6,000 of the 50,000 predicted applicants will be tested during the fall of their senior year.

Another defense presented was that modernization had resulted from use of single-day walk-in examinations to fill emergency vacancies. However, testimony was received that emergency vacancies often arise because the Board of Examiners has not promulgated an eligible list by the beginning of a school term and, thus, no one can be appointed to a regular teaching position in that license (although many qualified candidates have taken the regular examination and are awaiting a formal determination of their eligibility).

In any event, some witnesses suggested that the one-day, walk-in type examination may have important ramifications beyond its current use in filling emergency vacancies. Presumably, its use to determine merit for regular licenses would satisfy the state constitutional and statutory obligations imposed on the Board of Examiners. In fact, Dr. Greene characterized the purpose of these much simpler examinations as checking the applicant's "minimum competence to begin teaching children the next day." This standard - "minimum competence" - is the same standard the Board says it uses for its regular examinations.

Finally, Dr. Greene maintained that the examination process, and especially the written test, should not be a deterrent because the applicants

> . . . . have taken examinations of various kinds in colleges and it is no great or horrendous thing to say that such applicants ought to be able to pass a test in their subject, ought to be able to demonstrate minimum proficiency in written English, ought to be able to converse with reasonable clarity on a professional subject.

(iii) Rigidity.

Another common theme in the testimony was that the present selection system is rigid and inflexible, unduly restricting the pool of eligibles. City Board President Bergtraum pointed to "the emphasis on formalistic training, formalistic requirements, long periods of service" as a reason why the New York City school system has a low percentage of Black and Puerto Rican professionals. He testified this emphasis was, moreover, a disservice to all applicants for professional positions.

Chancellor Scribner spoke of the current selection system as a "form of city certification . . . laid on top of state certification" which ". . . [i]n many respects . . . is far more intricate and much less flexible than state certification." The Chancellor amplified this point with a statement which captures the essence of the testimony of many other witnesses :

> Because the precise system of licensing severely limits the schools of this city in selecting professional staff, the system in its existing form, I believe, is self-defeating. For example, the present list of eligible candidates for appointment as high school principals is comprised of approximately 12 names . . . . Without deprecating the professional ability of the candidates on this list, it is patently absurd to limit the search for high school principals for New York City to that list. It's a decimated list of a dozen candidates who qualified for that list on the basis of an examination given more than two and a half years ago. The kind of system which sets such limits does not serve the best interests of youth, I believe . . . . I would also submit that in 99 percent of the situations in the United States you are not confined, restrained, to this kind of a system. I would also submit to you as a part of this record that we ought to take a look today at some of the problems we have, and ask ourselves if any of it, if any of it, just a bit of it, may be contributed by this particular situation.

Dr. Greene responded to this criticism by charging that patronage would inevitably follow the establishment of a more "flexible" system :

> Let's examine this phrase 'flexibility' which is a public relations word and sounds wonderful. I think you ought to want to examine it rather than merely accept it. It means you have a right to choose anybody that you want because you say that if you are the boss . . . you are accountable, and if you are accountable you ought to have the right to choose the staff. That sounds wonderful on the face of it. But, this is the timeworn argument that existed before Civil Service, because every department head in public employment said that too. The head of a Fire Department might say you can't hold me responsible for the Fire Department unless you let me choose all the firemen . . . . Then the new head comes in. The new head doesn't want these people, he didn't pick them, there is no flexibility anymore, he wants them out. That's the spoils system. If you want that flexibility, that's what it leads into and that's one of the things the public and legislature and I believe the majority of people in this city do not want in the school system.

But a fair review of the testimony of those who advocated flexibility did not reveal that any believed there should be authority to remove competent professionals from their positions in order to replace them with new, handpicked persons. In fact, these witnesses often emphasized that their criticism of the current selection system for its inflexibility was not a challenge to concepts of tenure and job security (although questions were raised in connection with accountability and promotion of school professionals).

Dr. Greene argued further that, far from restricting the pool of eligibles, the current selection system in fact results in a larger pool. He called attention to eligible lists, such as the elementary school assistant principals' list, with

700 to 1,000 names. According to Dr. Greene,

> . . . the reality of that so-called flexibility is that the person who makes the choice makes it from a very small group of those he knows or those who are recommended to him or those who are forced upon him by influence.

And the persons selected under a free choice system will be "yes men" as opposed to the many "nay sayers," iconoclasts and innovators who are now included on Board of Examiners' eligible lists.

Responding to concerns about corruption, Peter Strauss, Chairman of Community School Board No. 2, testified :

> I want to return to the role of the community school board in the selection process . . . . Among the dangers is the possibility that political or other improper criteria will be used to discriminate against qualified professionals. This should not and need not occur if fair and reviewable standards are developed. . . . The community school board should be required to develop objective, rational and reviewable - I think that is important - reviewable employment criteria which would supplement the minimum standards.

Still Dr. Greene's dichotomy is at the very heart of the dialogue about the professional's relationship with the community in which he works and the parents and children to whom he is ultimately responsible. Where is the line between a professional who is sensitive to the special needs of a community and its children and a "yes man?" Where is the line between an iconoclast and a professional who simply cannot relate to or understand the children he is asked to teach or supervise? These are difficult questions which cannot be disposed of by generalities. The test of a selection process is whether it can indeed make the appropriate distinctions.

(iv) Cost and Patronage.

Many witnesses criticized the high direct and indirect costs of an elaborate local examination system. The Board of Examiners' annual budget now exceeds $3.5 million. Several witnesses argued that since the failure rate on the most popular examinations has been so relatively low (from 2% to 28% but seldom as much as 20%), the cost per "incompetent" screened out is extremely high.

According to Miss Jeanette Hopkins, a vice-president of Metropolitan Applied Research Center :

> . . . [A]ll but approximately $66,000 is paid for salaries. If the $32,000 paid to each examiner is subtracted, about $2.8 million is left for the Board of Examiners to disburse to assistants and consultants of their own choosing. Overall, the budget of the Board of Examiners has increased about 233 per cent during the 10 years between 1958 - 59 and 1968 - 69. By comparison, the total budget of the Board of Education increased 175 percent during the same period. For other comparison, the budget of $3 million-plus of the Board of Examiners in the year 1968 - 69 approximates the money spent for libraries in all day schools, and exceeds that spent for adult education in evening high schools.

Several witnesses testified that the large proportion of the budget of the Board of Examiners available for salaries of assistants is a form of patronage. Peter Strauss, President of Community School Board No. 2 in Manhattan, said that the manner in which examination assistants are selected :

> . . . is one of the things that has always distressed me very much, that in a system which has defended itself by arguing it was so fair and objective, the very people who did the examinations were chosen in a system of patronage. The way you get to earn that $3,000 or $4,000 a year as an assistant

> examiner is really by whom you know downtown. I've had experience where principals and assistant principals have complained to me that because of some personal run-in with somebody who made the selections, they are no longer employed as assistant examiners.

Andrew Donaldson, Community Superintendent of Community District No. 9 in the Bronx, who holds a number of licenses within the school system, spoke from his personal experience with the examination process.

> There is no merit to the Board of Examiners. It has discouraged people from coming into the school system. The actual examining . . . is not done by the four members of the Board of Examiners who are carefully examined in objective tests, but by an army of hundreds of assistant examiners, both permanent and temporary, who are paid and who actually create the tests, conduct them and mark them. I would suggest that the millions of dollars spent on this endeavor could be better spent on the children of New York City. . . . The . . . political patronage and interference exists right now, and has existed, in the Board of Examiners. And what appears to be 'merit' is strictly a facade.

Superintendent Donaldson also referred to an indirect cost of the examination process which drew the opprobrium of many witnesses - costly private coaching courses. And the costs are not limited to the registration fee for the coaching course (although that, by itself, can be significant). There are also costs in terms of time committed to an exercise which may have limited, if any, relevance to the performance of the job, according to witnesses who had taken and given such a course. Mr. Donaldson testified :

> I think we are all aware of the examination jargon, the fact that there is a kind of language which has to be learned -- rote learned -- to be spewed back on the examinations whether in written form or in verbal form; the fact that people make hundreds and hundreds of dollars writing these books, these

coaching books, thousands of dollars conducting the coaching courses, which still exist, in order to learn the jargon and spew it back. . . . [E]ven in the official coaching courses which have just been begun in the last few years by the Board of Education to prepare candidates for the exam, the phrase is used, as has always been used, 'For Examination Purposes Only.' At the time I took the examination, of course, there were not any Board of Education coaching courses. You had to pay. And when they talk about minority group candidates, if I hadn't had the G.I. Bill of Rights I probably couldn't have afforded the coaching courses. It costs $700. There were several hundred people in it. A principal, practicing principal, was conducting it, a principal who made sure that he told us that he made it a point to play golf on weekends with some of the examiners who are on the Board of Examiners. . . . The saddest part of this entire fiasco is that it has discriminated against whites more than it has discriminated against Blacks. . . . Having gone through this, having sat with the hundreds in the coaching courses and having heard the anguish, I can tell you most of the people who were discriminated against were not Black or Puerto Rican or Spanish, these were white people. I have heard of the men who had to take their families up to the Catskills all summer and virtually abandon them so as to retire to cabins and cram and cram and cram, to learn the nonsense material in order to be able to regurgitate it on signal at top lightening speed. . . . [In the coaching courses] you are virtually trained out of doing every single thing you learned in school. Your whole orientation is 'For Examination Purposes Only.' You are told by the coach over and over again this has nothing to do with running the school; this has nothing to do with reality; this is in order to pass the examination.

John King, a former Executive Deputy Superintendent of Schools and now Professor of Education at Fordham University, testified about his experience as the operator of a private coaching course and as the moving force behind the creation of the Board of Education's coaching courses for supervisory examinations - the so-called Professional Promotional Seminars.

> Immediately after I was appointed an assistant principal, I started coaching courses, not out of altruism but in order to supplement my salary as an assistant principal. . . . If one wanted to become a supervisor or if one wanted to become a teacher he had to match wits with the Board of Examiners with the help of a coaching course. . . . The examination is a rather extravagant examination of a person's ability to memorize facts -- and I know that it can be done that way because in giving coaching courses over the years I could guarantee . . . that the person would pass that examination if he did the things we asked him to do in memorizing the necessary mnenomics and other devices. . . . I was preparing people to pass an examination. I was not preparing people for the principalship.

According to Dr. King, the Professional Promotional Seminars, at least initially, were designed to serve the same function - to get people through examinations. When questioned by Mr. Tractenberg about whether a school system doesn't seem to be working at cross purposes when one of its arms is creating and administering an examination process and another is preparing people to succeed in that process, Frederick Williams, Assistant Superintendent in charge of the Division of Recruitment, Training and Staff Development [now Deputy Superintendent for Personnel], could only answer that other institutions have done the same.

The Board of Examiners defended against these criticisms about the cost of the system in several ways.

First, Dr. Greene argued that, in fact, it was less expensive to use local examinations administered by the Board of Examiners than to use an alternative written examination such as the National Teacher Examination. To support this claim, he stated that the short-answer part of the Board of Examiners' common branches elementary school teacher examination could be prepared, conducted and graded for $5,000. If the approximately 6,000 applicants who normally take this examination annually took the NTE instead, it would cost $78,000 ($13 registration fee per applicant). Therefore, the use of the local examination would save $73,000, according to Dr. Greene.

The basis for Dr. Greene's $5,000 cost figure is unclear, however. Certainly, from an overall point of view, it is difficult to conceive of how so low a cost figure could result. The Board of Examiners' annual budget is more than $3.5 million. According to Dr. Greene, roughly 50,000 applicants are examined each year. That would suggest the average cost of examining each application is more than $70. On that basis, the cost of the common branches examination for 6,000 applicants would be more than $420,000.

But aside from the details of how the cost of Board of Examiners written tests is computed, many witnesses considered any mandatory written test unnecessary, if not undesirable. If the written tests were eliminated entirely, the cost savings would be indisputable. The Board of Examiners' response was that decentralizing the selection system would lead to expensive duplication, whether or not a written test was used. Dr. Greene said :

> . . . [W]e have 50,000 teachers applying to us. What will happen in New York City if there are 30 community boards and we know there are 50,000 people who want the jobs? Are the 50,000 people going to apply to Local School Board 1 and also to Local School Board 2 and 3 and 4? Is each Local School Board going to screen 50,000 or a thousand who are on the principal's list . . . .?

He did not suggest whether there were mechanisms other than the Board of Examiners, such as a central recruiting and screening system, which could perform such tasks. In any case most of the witnesses at the hearings

wanted to decentralize the decisive appointment authority rather than the ministerial referral authority.

To the charge of patronage in the Board of Examiners' selection of temporary examination assistants, Miss Unser, Dr. Greene and Dr. Alfred Weinstein, President of the Junior High School Principals Association and a unit head of the Board of Examiners, conceded that the procedures for selection of full-time and temporary assistant examiners were entirely informal and based largely on recommendations. All stated that for years the Board of Examiners has urged the Board of Education to require examinations for full-time staff members to replace the current practice of assignment of persons licensed as teachers or supervisors. Dr. Greene stated that he and Dr. Rockowitz, another member of the Board of Examiners, have been appointed as a committee to develop more formal procedures for the selection of temporary assistant examiners, or, as he said, "some procedure that will be free of any taint and fairer." At another point, Dr. Greene said that, "If charges of patronage are made, if this [a more formal procedure] is believed in any way to make it better and fairer, . . . that's the purpose of the committee. . . ." And, at yet another point, "If there is public dissatisfaction with the way it is being done, then it [a more formal procedure] is worth doing. . . ." Clearly, the Board of Examiners is becoming sensitive to public concern about the method used to expend about $2 million of its budget for temporary assistant examiners.

The final area of criticism -- coaching courses -- gave rise to several interrelated defenses summarized in an exchange between Mr. Tractenberg and Miss Unser.

> Miss Unser: . . . The Board of Examiners suggested originally that there ought to be professional seminars, not to coach people for examinations because there is no special know-how or expertise to take this kind of exam as compared to anything else. . . . We suggested that professional seminars be set up to increase the professional competence of minority group applicants so that they would be better prepared to be successful in examinations.
>
> Mr. Tractenberg: In view of your last comment, particularly, I would like to . . . get your reaction to a page . . . from the notes handed out in one of

the private coaching courses . . . last fall. . . . Some of the advice given included the following: number one, if in doubt about any item, include it; the marking key does not provide penalties for errors, no matter how foolish.

Miss Unser: . . . We are not responsible for what some coaches may be saying in an effort to drum up business.

Mr. Tractenberg: I wasn't suggesting that you were responsible for them. I think it is interesting, however, how people who are within the system, licensed people, view the examination process. Among the other hints given are, 'Don't waste time erasing, simply cross out. Remember, time is of the essence.' Next, 'Shall I use mnemonics? Yes, these constitute an integral facet of your successful examination technique. The mnemonics we will provide, and in accordance with the techniques prescribed and subject matter presented, will do much to insure your success in this examination.' . . . Do you have a reaction, not in terms of the Board of Examiners being responsible in any direct way. . . . but simply about this as a perception of how people see your exams and ways in which they can tutor people to pass them?

Miss Unser: . . . We can't stop them if they have faith in that sort of thing. . . . I didn't think it was necessary to go through that sort of thing, but if people make money out of it and other people think it will help them, we can't stop them. I don't think it reflects our philosophy at all.

Mr. Tractenberg: Do you regard it as a wasteful by-product of the examination system?

Miss Unser: I certainly do not. I think there are coaching courses all over for people who think they should have some help. We have always refused to use anyone who was engaged in coaching as an examination assistant.

Mr. Tractenberg: I want to point out that your by-laws say anyone who has conducted a private coaching course in the past three years is excluded, but presumably if a person conducted one four years ago he would be eligible to be an assistant examiner and, similarly, someone who is currently serving as an assistant examiner would be fully eligible under your own by-laws to be head of a private coaching course immediately after his connection is severed.

Miss Unser: If he so desired, we couldn't stop him.

Data provided the Commission by the Board of Examiners since the hearings indicate that during the past three years, "approximately 65 examination assistants have been removed from service because of participation in courses preparing applicants for license examinations."

(v) Invalidity and Bias.

The most serious of the criticisms levelled against the current selection system is that it lacks validity and that it fails to achieve the objectivity claimed to be one of its cornerstones.

Some background is necessary to understand the criticisms and defenses in this area. The information which follows was extracted principally from testimony of the

witnesses participating in the segment of the hearings devoted to test validity.

An examination process is evaluated by three principal criteria-objectivity, reliability and validity. Objectivity signifies that, to the extent possible, each applicant is evaluated on the basis of criteria and by means which are applied uniformly to all applicants, that is, there is no bias or discrimination against any applicant or group of applicants. Accordingly, every effort must be made to neutralize the subjectivity of those who construct, administer and grade the examinations.

Reliability refers to the consistency with which an examination measures what it purports to measure. A completely reliable examination, therefore, is one on which each applicant will achieve the same score no matter how many times he takes it.

Finally, validity expresses the degree to which an examination actually measures what it is used to measure. In the case of examinations used for employment purposes, validity is often referred to as "job relatedness." Two types of validity dominated the testimony on this subject-content validity and predictive validity.

According to Dr. Robert Thorndike, Professor of Psychology and Education at Columbia Teachers College and a testing consultant to the Board of Examiners, content validity is assessed in terms of how well the examination tasks match specific parts of the performance required on the job and how important those parts are to total performance. This assessment generally is made both by those familiar with the particular job and by those expert in creating examination tasks to reflect important parts of job performance.

Predictive validity, on the other hand, is an examination's ability to identify who will perform well on the job. This type of validity usually is evaluated by empirical studies to determine whether examination scores are closely related to appropriate measures of success on the job.

To illustrate these principles in the teacher context, a portion of an examination for elementary school teachers might be designed to test knowledge of English grammar. (This is like most Board of Examiners written tests which, according to Drs. Greene and Thorndike, are proficiency tests designed to measure acquired knowledge rather than

aptitude tests.) Because most elementary school teachers teach English grammar, this subject matter knowledge may relate to an appropriate job task. Whether it is sufficiently important to warrant being singled out as a part of the selection process must be assessed by those completely familiar with teaching in the schools today. On the other hand, whether the test items designed to determine if applicants know English grammar are likely to do so must be assessed by test experts. Only then can the content validity of this portion of the written test be determined. But even if it validly tests applicants' knowledge of English grammar, success on it is no assurance of success in actually teaching students English grammar. The only prediction about performance made by a content validity test of this kind is the negative prediction that a person without minimum knowledge of English grammar will probably not be a good teacher of it.

A determination of predictive validity does not depend on this kind of judgment. Rather, it requires identifying criteria of good English grammar teaching. Then, an empirical study must be conducted to see whether high scorers on these test items tend to be better at teaching English grammar than low scorers.

Because a proficiency test assesses the extent to which an applicant has certain specific skills or knowledge required on a job, according to Dr. Thorndike, it is usually validated by a content validity study. An aptitude test, on the other hand, determines whether a person has the underlying abilities that are necessary if he or she is to acquire the knowledge and skills of a job. A predictive validity study is normally used in this case.

Some testing experts state, however, that predictive validity studies are appropriate, if not necessary, for proficiency tests as well. Dr. Thorndike considered such a study to have "supplementary relevance." Counsel Tractenberg pointed out to Dr. Greene that another Board of Examiners testing consultant, Dr. Aaron Carton, Professor of Education at Stony Brook, went further, saying, "Without studies of predictive validity (i.e., assessments as to how well the tests select individuals who function successfully on the job) the very assumptions as to what constitutes expertise in any given field cannot be fully tested."

This is important testimony because, as we have seen, Drs. Greene and Thorndike have said that most Board of Examiners written tests are primarily proficiency tests (although Dr. Richard Barrett, another psychometric expert who has reviewed these tests, testified that they are aptitude tests because a teacher's or supervisor's job does not involve writing answers to questions but rather using skills or communicating knowledge). Much of the criticism of the Board of Examiners tests was based on the lack of predictive validity studies.

A final background item is important. Validity, considered in its broader, lay sense, has several components. One, the psychometrician's (testing expert's) concept of validity just discussed. Two, the lawyer's concept of legality under constitutional, statutory or regulatory standards. Three, the layman's concept of general relevance to the school system and the education of children.

* * *

Criticisms of the examination process have focused on two of the criteria for evaluating examinations - its lack of validity in the broader sense, and its lack of objectivity.

> Validity. Of the many witnesses who spoke to this issue, the predominant reaction was that there is insufficient evidence of validity to warrant continued reliance on the current examination process. No proof exists, according to many witnesses, that applicants who score well on the examination perform better on the job than others. Indeed, other witnesses suggested the system is actually anti-merit, that, for example, it screens in those who know or care to learn the lingo and the orthodox test knowledge, but screens out many who could be more effective teachers and supervisors. Albert Shanker, President of the UFT, testified, "I would think that an examination which takes the amount of time to cram for, which some of the examinations have . . . [is] counterproductive and, in many cases, it might actually tend to attract a person who is . . . less qualified for a job."

Criticism about invalidity was voiced in the main not by those whose careers had been impeded by problems with the examination process. Deans and professors of schools of education, community board chairmen and community superintendents, current and former Board of Education officials, teachers and supervisors who had been successful in the process, educational consultants and testing experts - most expressed the same concerns.

The consensus is striking for two reasons. It may, of course, point to an actual lack of validity. But even if the examination process could be demonstrated by test experts to have a satisfactory level of content validity, the fact that so many responsible people involved in so many facets of education react to it as they do might compromise its actual value as a testing instrument. Test experts have a term for it. They speak of free validity - a limited kind of validity based on whether the test-takers believe the test validly measures some job-related characteristics.

Wendy Lehrman, a teacher at P. S. 87 in Manhattan, told of her reaction to the test.

> I was told where to go for this coaching . . . It was memorizing - they gave us old examinations and told us old answers and . . . we were told that we mustn't stray from or challenge the status quo. There were certain answers to be expected from us. We weren't to use multisyllabic words or complex sentences . . . because we might misspell them or do anything to increase the statistical chance of error. We were given the key vocabulary in fad that year in order to incorporate it into as many answers as possible. I spent two weeks memorizing meaningless phrases.. . . It was

> apparent that I was neither expected to be intellectually or morally committed to, or capable of carrying out, any of the answers. . . . I passed the examination and there was no way they could tell whether I could communicate with children. . . .

The criticism that there is no evidence of a correlation between good performance on the test and good performance on the job goes largely to an absence of predictive validity. Even assuming the Board of Examiners tests are proficiency, rather than aptitude-type tests, a number of testing experts believe, as we have seen, that predictive validity studies are important and useful. Designing such studies is admittedly difficult. But Dr. Greene testified that the Board of Examiners has never attempted such a study with respect to its teachers' examinations. (Apparently there has been a minor predictive validity study of a supervisory level examination.) By way of comparison, the Educational Testing Service has carried out several predictive validity studies of the National Teacher Examination, according to Dr. James Deneen's testimony, and the Philadelphia school system has recently begun a predictive validity study of its own selection process.

The Board of Examiners responds to criticism about the lack of predictive validity evidence in two ways. First, that it relies on content validity rather than predictive validity. Second, that there is a shortage of funds, as described in the following exchange :

> Dr. Greene: . . . [D]id we imply that we believed the first three people . . . on the list . . . are better than the next four in terms of teaching ability or supervisory ability? I don't believe we have. . . .

> Mr. Tractenberg: Then the record ought to be clear that the ranking of people on the exam, insofar as the Board of Examiners is concerned, has no correlation to their likely performance on the job.

Dr. Greene: . . . I have said that the ranking indicates that on the test we have used . . . these are the people who did best.

Mr. Tractenberg: This does not represent a prediction on your part?

Dr. Greene: We don't have evidence on that.

Mr. Tractenberg: I gather you don't plan to acquire that evidence.

Dr. Greene: We have tried. We didn't have a research staff at all until three years ago. We pleaded for one every year. Now we have two people. . . . Hardly enough in today's climate. Hardly [enough to do] anything more than to get guidance from the colleges.

Mr. Tractenberg: You agree if you had a larger staff through more budget funds you could have taken more extensive efforts to validate the tests?

Dr. Greene: We have pleaded for that. There are so many problems that we really ought to go into. The percentage of our budget allocated for research is abysmal as compared to other organizations.

Mr. Tractenberg: What is your budget for this current year?

Dr. Greene: We have one research associate and one assistant. I would say, therefore, it's about $40,000.

Mr. Tractenberg: Out of a total budget of how much?

Dr. Greene: About three million.

Mr. Tractenberg: Doesn't it seem the proportions are a little askew, and wouldn't it make more sense [to spend a little more to] find out whether the tests are valid and a little less on giving them?

Dr. Greene: I agree we should have more research and go into matters of validity whether predictive or content. . . ."

Dr. Greene's statement that more research is necessary regarding even content validity leads to the second main area of criticism - that the examination process lacks even content validity.

As noted above, content validity depends principally upon two ingredients. There must be adequate job descriptions, prepared by persons fully familiar with the current demands of the positions, on the basis of which the test items are constructed. And the construction of the test items must be done by persons with the necessary expertise. Many witnesses charged that neither of these ingredients is present in the New York City school system's examination process.

Theodore Lang, until recently Deputy Superintendent in charge of the Office of Personnel, testified that during his five and one-half years in that position he was unaware of any updating of the description of duties for any teaching license.

Mr. Tractenberg: But isn't it your responsibility . . . to devise that statement of duties?

Dr. Lang: I would say that we do have a responsibility to devise the statement of responsibilities and send it down, yes.

> Mr. Tractenberg: But you have not felt that responsibility involved updating any of the teacher statements of duties in at least five years?
>
> Dr. Lang: That's correct. That doesn't mean it shouldn't be done now, but I have not up to this point.

Dr. Greene explained how the Board of Examiners compensates for this lack of a job description. "When an examination is prepared, we bring in experienced principals, college personnel, and we often begin by saying what are the problems that teachers will be facing. . . . Let us prepare questions based upon the problems teachers face and the knowledge that they should have in today's climate. . . ." But Dr. Greene conceded that this was an informal procedure - a "shortcut" in his words. "I don't believe we have been derelict in getting the facts, but we haven't gone through a procedure and they [the Office of Personnel] haven't bothered sending it." Dr. Gree e testified, "Every time they ask us for an examination they should send us such a statement [of duties]." When asked whether he was satisfied that the panels of experts were sufficiently in touch with the real needs of the school system, Dr. Greene replied, "We hope so."

During the testimony of Stephen Pollak, former Assistant Attorney General in charge of the Civil Rights Division of the Justice Department, Mr. Tractenberg quoted from a statement by William Ennis, staff psychologist at the U. S. Equal Employment Opportunity Commission, which is relevant to the composition of such panels. Dr. Ennis cautioned against using job analyses developed by people serving in the position for which the examination is being given, saying :

> The job analyses should be conducted by independent persons trained in this activity. . . . Otherwise, the results may be seriously biased by self reports which are completed by the incumbent. . . . The reason for this potential bias is that many employees . . . tend to report as important those work aspects which they most enjoy or those which they do well. . . . Therefore, some critical components of the job may be slighted, even though they are matters of the greatest concern. . . .

The absence of updated job descriptions for teaching positions was a source of concern to some witnesses. Dr. Thorndike, who has been an expert testing witness for the Board of Examiners in litigation, testified that, "Assuming the job has substantially changed, if the description refers to a previous job which is obsolete, it would not be very useful." (Dr. Thorndike did question whether the passage of five and a half years necessarily meant the earlier description was obsolete.) Dr. Barrett, who specializes in the impact of testing on minority groups, criticized the job description facet of the process for reasons other than failure to update. He said :

> The first and, I think, most crucial step in developing a selection procedure is a job description. The job description should tell what a person does, why he does it, how he does it, what skills are involved, what kind of performance is likely to lead to success, what kind of performance is likely to lead to failure. Once there is a good job description, and this could take months for a complicated job such as that of a principal, the description will serve as a guide in the development of the rest of the selection procedures.

Dr. Barrett characterized even the formal job descriptions which the Board of Examiners relies on in constructing some examinations as mere skeletons, referring specifically to a recent job description for high school principals.

> One item is to work to build and maintain high teacher morale. That is the end of the statement. As it stands there, it is simply a platitude. Everybody wants high morale of the people that work for him. . . . /T/his is a skeleton of a job description and does not give the kind of information that is useful for a person who is going to develop a test. . . . The problem that first comes up if we don't have an adequate job description is the person who is developing and scoring the tests, interviewing people or giving them an observation, . . . must fall back on his experience. This means we have some senior person who has been in the system for a long time, whose experience is rapidly coming out of date as circumstances change, who has probably had a very limited experience in a system of 900 schools, he cannot have seen all of it. He falls back on his own experience and tends to perpetuate the conventional wisdom of the existing establishment and it makes it difficult for him to conceive of . . . different kinds of people coming into the kind of job he has been used to.

If a test is not sufficiently related to a careful, complete and current job description, its job-relatedness is clearly at issue. That raises a serious legal issue according to former Assistant Attorney General Pollak.

> The Supreme Court has ruled that 'any qualification must have a rational connection with the applicant's fitness or capacity to perform an occupation or profession. . . .' In my judgment, this means that no school board may lawfully use a standardized test as part of its selection process, whether for hiring, retention or promotion, unless that test is a valid and reliable measure of the candidate's capacity to perform well on the job for which they are under consideration. In fact, the United States District Court for the District of Massachusetts has so held in December of 1969 in the case called Arrington v. Massachusetts Bay Transportation Authority. It ruled there that the Authority denied rights guaranteed by the Fourteenth Amendment when it decided among applicants . . . on the basis of scores from tests which were not job-related.

Mr. Pollak amplified these remarks in testimony so important as to warrant abundant quotation :

> The thrust of the due process requirement is simply that school boards must act reasonably. If a board refuses to hire, retain or promote a teacher because of his score on a test, then the board should be able to show that the test is a reliable predictor of the capacity of those taking the test to perform on the job in that system. If the board cannot make this showing, its action, if challenged, will not be sustained. To fulfill the mandate of the Equal Protection Clause, the standardized test must not burden or benefit candidates because of their race, economic class, or religion. . . . Further, where a test measures only a portion of the qualifications required for successful performance on the job, and that is really true with all tests that I know of, and where members of a minority group uniformly score lower on the test, the Equal Protection Clause would preclude a school board from acting solely on the basis of the test. . . . There is no requirement on plaintiffs to show that the school board has used the test purposefully to discriminate. . . . In determining whether a test discriminates against members of a minority

> group who will be in the test population, the school board should make its own study using expert help as necessary....Where a test makes valid predictions for members of a majority group, but not for a minority, it should not be used in evaluating the latter....Where the test measures minor traits of teachers rather than major ones, it should not be given significant weight.... Alternatives which measure critical traits should be sought and weighed more heavily. Moreover, this process of validation and review for non-discrimination should not be conducted once and then forgotten. Analysis of the effect of the test on minority applicants and review of the relationship of the test to the skills considered necessary to top performance on the job must be a continuing responsibility of the school administrators....I fear that few, if any, school boards have made....the studies necessary to insure that a test serves their legitimate needs without discrimination. These studies must be made and repeated as needs change, if tests are to be the servant of the boards, rather than their master....Unless used within proper and careful limits, a test adopted as a part will become the whole of a selection process in what I believe will be serious risks of violations of the Constitution.

The pending case of Chance v. Board of Examiners challenges the constitutionality of the Board's supervisory examinations along the lines discussed by Mr. Pollak. The Federal District Judge has ordered the Board of Examiners and Board of Education to provide pass-fail data broken down by race. To do so, the Board has had to conduct its first such study regarding supervisory examinations. Nothing in the testimony at the hearings suggested that such a study, or any other study dealing with the effect of the examinations on minority groups, has been conducted with regard to teacher examinations.

The absence of an adequate job description may create legal problems in light of Mr. Pollak's testimony, but the expertness with which job tasks are translated into test items may also require scrutiny. The need for substantial expertise in the areas of psychometrics and personnel management was

well-recognized by the expert witnesses. Dr. Deneen agreed that the input of psychometricians and other experts in test construction was indispensible to the construction of a valid examination. Dr. Thorndike said that if the personnel constructing examinations had familiarity only with the demands of the particular job, "...this is only one half of the kind of competence that would be needed...." Indeed, he said he would be "uncomfortable" if those who played the principal role in constructing examinations were examination assistants with "no job descriptions....employed [by] a rather informal process of recommendation" without written standards.

Yet, according to members of the Board of Examiners, this is the way their entire permanent staff, except for the four members, themselves, is selected. They are licensed pedagogical personnel already in the school system who are assigned to the Board of Examiners. According to the testimony of Miss Unser, they are not required to have any background or training in test construction (although some of them may have some such background or training). Indeed, there are no written requirements at all and apparently no written procedures regarding who among the school system's licensed personnel will be assigned to the Board of Examiners. The process by which temporary examination assistants are selected is, if anything, even more informal. As the earlier discussion of patronage within the system indicated, many witnesses saw this process as totally inconsistent with a merit system, and members of the Board of Examiners agreed that substantial changes should be made.

It may also be inconsistent with validity, according to a number of witnesses. For example, Irving Flinker, Principal of George Gershwin Junior High School in Brooklyn, said:

> Assistant examiners are chosen to help administer the tests on the basis of the license held....The license to serve as teacher or supervisor in a special field is considered, ipso facto, enough qualification to construct and administer tests to teacher and supervisory applicants. No inquiry is made into the actual competence, personal qualities or special skills of the assistant examiners. A very small percentage of these assistant examiners has ever had a single graduate course in personnel selection or management. The preliminary briefing given to the assistant examiners is minimal and leaves much to be desired for administering an objective examination. It is my belief that among a group of assistant examiners...the variability of expectancy and standards is so wide as to

> negate the reliability, validity and objectivity of the entire examination process.

Dr. Greene said that although temporary examination assistants are "selected on an informal basis by recommendation", their competence is insured by an initial informal screening process and by removal from the approved list if their services prove unsatisfactory. The adequacy of these procedures has apparently been questioned within the school system for some time. The Board of Examiners provided the Commission with a copy of a letter from Dr. Greene to Dr. Lang, dated March 21, 1969, in which Dr. Greene, responding to a request, provided a statement of how the Board of Examiners staff was selected. Among other things, he said:

> The work of each examination assistant on the job is reviewed and from time to time changes are made if the work is less than satisfactory. Since careers of individuals are determined by the recommendations of examining panels, it is important that the individuals who are chosen to serve on panels be people of good judgment, of substantial experience, of breadth of vision and understanding, informed in their fields and able to maintain the confidentiality of the process.

Later in the letter, Dr. Greene said, "In the past 3 years the compensation for examination assistants has increased considerably and we have had a number of requests from individuals who are desirous of serving.... [W]e anticipate a need for formalizing the procedures." Yet at the Commission hearings almost two years later Dr. Greene said that he and Dr. Rockowitz had only recently been appointed a committee to develop more formal procedures. How have the informal procedures worked in the interim? According to information provided by the Board of Examiners, of the 4,500 examination assistants "approximately 8 examination assistants have been removed from the approved list in the past three years for cause. Removal is based on an evaluation of their services by examiners and Unit Heads."

Although about 3,500 of the 4,500 persons used as temporary examination assistants come from within the school system, some testing experts are presumably among the other 1,000. Miss Unser stated that:

> We have a range of expertise available to us that is far greater than our permanent staff members. We have thousands of persons within and without the school system in state education departments, in universities, from other disciplines, from the social sciences, from psychologists, from industry,

whom we call upon.

Exactly how many of the one thousand qualify as test experts and how often they are employed by the Board of Examiners would be important information in assessing the adequacy of the Board's test construction. But the Board has taken the position that the identity of temporary examination assistants is confidential information and has not provided it to the Commission.

The final place to seek expertness in test construction is among the four regular members of the Board of Examiners (the Chancellor or his designee is the fifth member). Contrary to their permanent and temporary staff, the four regular members are required to take a Civil Service examination which they say was "probably the most difficult Civil Service examination ever given." Test construction is one of the subjects covered. Yet, the four current members are all former English teachers who then moved up the supervisory ladder. When asked whether she regarded herself as a test expert, Miss Unser replied, "I don't regard myself as a psychometric expert because I don't know what that really means...."

Lack of Objectivity or Bias. Many witnesses charged that the system was discriminatory, if not in purpose, certainly in effect, and not alone on racial or ethnic grounds. It operates also against outsiders, against all who are different, against all who do not reflect the conventional wisdom, it was alleged. Dr. Laurence Iannacone, Professor of Education Administration at the University of Toronto and staff director of a study of the Board of Examiners, testified that the personnel practices of the school system "function to protect the vested interest of earlier arrivals, more established ethnic populations...at the expense of more recent in-migrants or newer upwardly mobile groups. The city schools' personnel system is so inbred as to be sociological incest." Ultimately, said a number of witnesses, it discriminates against the children by being an "anti-merit" system.

From the inception of this investigation, the Commission made it clear that while the law required it to uncover discriminatory effect as well as intent, complaints presented to the Commission concerning the public school system raised questions of discriminatory effect and not intent. In opening the hearings Chairman Norton described the importance of focussing correctly on discriminatory effect, the phenomenon the courts have often found in Northern as opposed to Southern situations.

> ... [T]he search for scapegoats has no place here, for no complex phenonemon of long duration can be explained by a select list of villains. This problem is systematic, not dependent upon any set of personalities. We must spend this week in trying to understand the intricacies and origins of a system which-no doubt without malicious intent-has taken on the trappings of exclusiveness.... [T]he implication that we are concerned with bigotry is equally simplistic and false. The problem is far more complicated than that. It is time that Northerners ceased judging their actions with regard to minority people by standards developed in the South where exclusion based expressly and overtly on race has been the rule. The courts have long made it clear that practices which have the effect of excluding groups, even if that is not their intent, fall within the purview of the law.... [W]e seek the common end of educating children while being fair to those who teach and supervise them. I...know that a school system based on merit and fitness will not tolerate any but the highest and most objective standards for selecting personnel.

This theme was echoed by a number of the witnesses. Dr. John King said he thought the small number of Black and Puerto Rican professionals was not a result of deliberate, planned discrimination. "I think that it's worse. It is not unfairness, it is indifference...."

Other witnesses saw the examination process as having two main sources of bias - cultural and geographic bias in the written test and opportunity for highly subjective reactions in the oral interview and review of record.

Recently there has been a nationwide crescendo of criticism of many written kinds of tests on the ground they are culturally biased. For example, in recent months Dr. Henry S. Dyer, Vice-President of the Educational Testing Service, attacked I.Q. and grade equivalency tests as "psychological and statistical monstrosities," stating as one of the reasons that, "[the sampling upon which the average is based] is very frequently biased against blacks...." The President of the National Bar Association cited studies indicating that state bar examinations are culturally biased against Blacks because they gauge memory and test-taking ability more than the capacity to practice law. A law suit has been filed charging that the principal test by which college graduates qualify for Federal employment and promotion, the Federal Service Entrance Examination, is culturally and racially discriminatory.

The Federal Government itself, through the Equal Employment Opportunity Commission, has established stringent guidelines for private employers with regard to testing.[1] The United States Supreme Court, in March of this year, held in the case of Griggs v. Duke Power Co. that a private employer's reliance on standardized general intelligence tests violated the Civil Rights Act of 1964 when the tests had the effect of disqualifying a disproportionate number of Black applicants and were not shown to be significantly related to successful job performance. Chief Justice Burger, speaking for a unanimous Court, said:

> The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation.... [G]ood intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as 'built-in headwinds' for minority groups....The facts of this case demonstrate the inadequacy of broad and general testing devices...."

Finally, the closest analog to the Board of Examiners' written tests, the National Teacher Examination, has often been charged with being culturally biased. During his testimony, Dr. Deneen of the Educational Testing Service reported:

> The question of a test's validity is often raised in relation to its appropriateness for minority groups. The prevalence of low test scores within a given population may be an indication that the test is unfair for that population.

On the other hand, said Dr. Deneen, the prevalence of low test scores within a given population may result from a validly designed test which measures college preparation and thereby reflects the poorer preparation of some groups of students, such as those attending Black institutions in the South. In that case, "the test scores attest not to differential ability but to the often separate and almost invariably unequal education that is offered to Blacks and whites in this country."

To ensure that its tests are as free from cultural bias as possible, ETS has undertaken an on-going program of review and revision. According to Dr. Deneen,

> Our tests have been subject to review...in the last

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[1] A summary of the EEOC Guidelines will be found in Appendix B.

> year by minority group persons. We had a panel of Black educators a year and a half ago, and they cleaned up, I don't think that's too strong a word, some of what they perceived as perhaps subtly racist items in the test. We are conducting currently two studies in bias... [to measure whether there is] bias against Blacks or other minority groups contained somewhere in the items in those tests....I could go on and on. This is a problem of enormous importance to us."

Significant modifications of the NTE have already resulted from this program. But an even more fundamental reaction to possible test bias is in the offing. According to Dr. Deneen, ETS has reacted to criticism of the NTE as a test for suburban teachers by designing a special test for those intending to teach in urban settings. Moreover, ETS is beginning to move toward development of a Spanish version of its test which could adequately test applicants for bilingual teaching positions. According to Dr. Deneen, the present NTE is not a valid test for applicants who are either more comfortable taking tests in Spanish or whose preparation programs were taken in Puerto Rican or other Spanish-speaking universities. The criticism of the Board of Examiners written tests on the grounds of bias (as well as invalidity) must be considered in this context of widespread criticism of written testing. Indeed many of the charges against the Board parallel the criticisms of Dr. Deneen, discussed above. A number of witnesses complained that the written tests were so oriented to New York City school practices that it was virtually impossible for someone not fully acquainted with the school system to do well. Others criticized the white, middle-class orientation of the tests. Some of the recent tests contain questions dealing with Black history or culture but there was testimony dismissing these efforts as inadequate.

Dr. Barrett raised an even broader issue by referring to a study by Professor Irwin Katz, formerly of New York University, which concluded that the element of threat in an examination process had a more harmful effect on Blacks than on whites. According to Dr. Barrett

> I have talked to various principals about how [the Board of Examiners'] testing procedure works and it is loaded with threat. There are cram courses.... [the applicants] meet and test with each other. They practice writing out tests....

> [I]f Professor Katz's generalization is true...this whole system is going to discriminate against those people who will take the test poorly regardless of how well they would have done on the job.

This concern also expressed in the testimony of Wendy Lehrman, a teacher at P.S. 87 in Manhattan, describing her experience with the examination process:

> I thought, all those examiners were white, they were all my people..., they were...City College people, the kind of people who talked the way I did, and that made me less afraid of them. I suppose if I was faced by a Black or Puerto Rican board I might not feel as comfortable as I felt then....

Some of the most compelling testimony regarding alleged bias came from Spanish-speaking witnesses. Among them were a number of applicants for licenses as Spanish teachers who said they had failed the examination because of an inadequate performance on the written English test. This is an essay portion which is graded for English spelling and grammar but not content. The testimony of Jorge Maldonado exemplifies these charges.

> I am a graduate of the University of Puerto Rico. In addition, I have taken graduate courses both in the University of Puerto Rico and in the City University of New York. For salary purposes I am considered to have a Master's degree equivalency in social studies. I have had experience as a teacher in Puerto Rico and in New York City. I have been working as a teacher for the Board of Education of the City of New York since September 1964, on a regular substitute basis. I have applied, so far, for eight licenses, of which I have six. It is the eighth license that I applied for that I want to tell you about tonight. This is the license for regular Spanish t eacher....The written part of the test, all in English, consisted of questions about Spanish and Latin American history and culture....The test consisted of three parts. First there was a short answer test, followed by a written essay. Then I was called for an oral interview which was conducted in Spanish and English. In my opinion, the interviewer did not master the Spanish very well. The test, in general, was an advantage for any applicant whose vernacular was English....

> In my opinion, just the knowledge of a few words of Spanish would have been enough for any applicant whose vernacular was not Spanish to pass the short part of the interview conducted in Spanish. Some time in May 1970, I got the result of the test. I had passed the short-answer test and interview. But I was disqualified for the license because my written English in the essay was unacceptable.... To require of prospective Spanish teachers an exam which tests written ability in English but not written ability in Spanish is not only foolish but discriminatory against native Spanish-speaking people, mostly Puerto Ricans....The method and standards employed by the Board of Examiners to grade my examination paper have the effect of discriminating against me because of a written Spanish accent. It is true that I may make grammatical errors, but these errors are no proof I cannot communicate with English-speaking students and parents. In addition, the grading method and standards apparently provided no credit for the quality or the competence or the content or the color, tone and expressiveness of language used by the applicant....I don't insist that when the tests of the Board of Examiners were created they were intended to discriminate against Puerto Ricans, but that is their effect today.

If, in fact, the examination process discriminates against Spanish-speaking teachers, this would be an extremely serious indictment of the system. Many witnesses stressed the critical need for more bilingual professionals. The figures speak for themselves. With the number of Puerto Rican and other Spanish-speaking pupils fast approaching the 300,000 mark, there are reportedly only several hundred bilingual teachers. Some witnesses spoke of community districts with more than 20,000 Spanish-speaking pupils and five bilingual professionals.

Testimony concerning the Chinese community was also devastating. This community has recently experienced phenomenal growth because of reforms effected in the immigration laws in 1965. Yet this city's public school system has almost completely failed to take account of the increased need for bilingual teachers to accommodate many youngsters who speak only Chinese. According to testimony, the resulting drop-out rate and other school problems among Chinese youth is perhaps the most important ingredient in the developing ghetto pathology in a community that has traditionally been free of such trends.

Although Mr. Maldonado's charge of bias did not relate to the oral interview, many witnesses told of disqualification because of speech patterns or "traceable foreignisms" in their speech. And this is not a problem limited to Black and Puerto Rican applicants. Among the white witnesses who told of failure for these reasons were Albert Shanker, President of the UFT, and Dr. Martin Frey, Community Superintendent of District No. 4. The following dialogue occurred after Mr. Shanker stated that he had failed several Board of Examiners' examinations.

> Mr. Tractenberg: I assume you were told the reasons for your failure.
>
> Mr. Shanker: Yes, I was.
>
> Mr. Tractenberg: Would you mind telling us what they were?
>
> Mr. Shanker: I think it would be interesting. Poor speech patterns.
>
> Chairman Norton: I think you speak fine, Mr. Shanker.
>
> Mr. Shanker: That's because I spent a year in front of a mirror saying, 'Look at the lovely yellow lilies,' and a few others I don't remember as well.

The charges of discrimination do not stop with the oral interviews. The examination process includes a review of record, and Ira Glasser, Executive Director of the New York Civil Liberties Union, charged the Board of Examiners with discrimination here, too. He testified that the NYCLU had evidence that licenses have been denied for the following reasons, among others:

1. Controversial political beliefs.

2. Refusal to release confidential Selective Service records.

3. Youthful offender convictions where supposedly sealed records have been obtained by the Board of Examiners.

4. Illegal arrests, where no conviction occurred, in civil rights demonstrations. (According to Mr. Glasser, the NYCLU is currently representing a teacher denied her license because of an arrest during a civil rights march in the South years ago.)

Against this range of criticism, the Board of Examiners made two principal defenses - that the examination process now has many safeguards against bias (including a number added recently in response to public criticism) and that the alternatives to the examination process would be fraught with much greater danger of bias.

Chairman Unser listed as essential features of a merit system a number which relate to preventing discrimination:

1. Absolute openness in terms of announcements of examinations, qualifications required, the scope of the examination, the pass marks and the opportunity to file.

2. Full documentation and reviewability of all procedures including a documented statement of the reasons for rejection.

3. Right of appeal to higher authority.

4. Confidentiality to keep the examination process free from undue pressures.

5. Professional development and administration of examinations.

6. Selection of members of the Board of Examiners itself, solely on the basis of merit and with tenure so they can be protected from undue influence and pressure.

Presumably, this has been the credo of the Board of Examiners for many years. And none of the witnesses objected to any of these features. What they maintained was that these criteria were not being fully met, not because of conscious prejudice but largely because the process was ill-conceived to ensure their full implementation. Even Dr. Greene's testimony about recent changes in the process reflects expressly, or by implication, that opportunities for bias existed notwithstanding this credo. For instance, Dr. Greene testified that,

> The separate oral English test was abandoned.... This is a city where immigrants come and so perhaps the standards were unreasonable....Our goal now is an interview test with ability to communicate so that children will clearly understand the teacher, so adults will clearly understand. There is no bar on an accent. At one time there were all sorts of hazards in the oral English test. That is no longer true.

Another change he referred to was the institution of a critical score concept, which involves the averaging of examination components so that a particularly strong performance on one part can offset a weak performance on another. "In other words, we recognize the written test itself has weaknesses and that to screen people out on a written test at 60 percent instead of 55 or instead of 50 may not be justified because personal factors are important."

Finally, Dr. Greene described with pride that oral interviews are now tape-recorded and the tapes are available to applicants. He asked rhetorically whether any other school district provides such selection safeguards. But the later testimony of Dr. Alfred Weinstein, a unit head of the Board of Examiners and President of the Junior High School Principals Association, made clear that the recording of oral interviews was begun only in 1968 in response to an express mandate of the State Legislature. When asked by Counsel whether the Board of Examiners had not been urged for years to make such recordings, Dr. Weinstein said it had. In fact, he reported:

> ... [A] number of years ago, as a colitigant in a suit, through our lawyers we asked for that, and many people who believe in the examination process believe that that would have made it mu h more valid....

Why did the Board of Examiners resist so long until they were required by law to record the oral interviews? Dr. Weinstein said he understood it was because they "...had these huge tape recorders and it was a question of expense, too, but I think it should have been done."

(vi) Inconsistency with Decentralization.

Another common theme which ran through the testimony was that a selection process which placed such great emphasis on a centrally created, conducted and rated examination was inconsistent with a decentralized school system. More than two years ago, the City Board of Education recommended in its Plan for Development of a Community School District System for the City of New York that, "Maintenance of a city-wide competitive examination system would be inconsistent with giving community boards powers and duties regarding appointment and promotion of teaching and supervisory staff...."/p. 18/

At the hearing, Chancellor Scribner expanded on this theme:

> By decentralizing management control of the elementary, intermediate and junior high schools in this city the /Decentralization/ Act gave to parents new hope of gaining greater and more direct control over the schools which educate their children and for which they pay....The process of decentralization is far from complete....It will be a painful process, marked by occasional battles and frustrations. One should not expect the carving up of long centralized power to be a serene act, but the significant fact is that the city has begun to move in the direction of high promise....Perhaps the most critical element in the process of enabling a youngster to learn is the quality of teaching available to him. Thus, the paramount responsibility of the community school boards of New York City is the same as that of all other school boards in this country, the selection of staffs for the schools of their districts....
>
> It is a power and responsibility which school boards ought not to take lightly and an authority which ought not to be unnecessarily diluted by the policies

> of other public agencies....In this city the selection of professional school staffs is still, in essence, a centralized process....[T]he list of candidates from which they [community boards] make their selection is defined by the centralized licensing system.... In short, the present system of licensing is a form of city certification by us laid on top of state certification.
>
> ....Nationally, I would estimate that 99 percent of all school boards rely on state certification and their own good judgment. It is my personal hope that this philosophy will soon prevail in New York City, for until the community school boards, those people closest to students and parents, are empowered to staff their schools on the basis of state certification and their own judgment as to competence and professional potential, these boards will operate with severe and undue constraints. They will not be fully responsible for the total management of the schools under their jurisdiction and no mechanism for holding these boards fully accountable for the effectiveness of their schools can be devised.

Chancellor Scribner contrasted the general requirement of centralized licensing with two other provisions of the Decentralization Act. Under one, each community board can select its community superintendent, its "educational leader" and "top man", in Chancellor Scribner's words, solely on the basis of state certification. Under another provision, schools whose reading scores fall within the lowest 45 percent of the city's schools (40 percent until next year), schools with the greatest need for outstanding professionals, may select their teachers on the basis of the NTE. According to the Chancellor, the inconsistency between the philosophy underlying centralized licensing and that underlying the two provisions should be resolved in favor of the latter.

Many other witnesses echoed Chancellor

Scribner's sentiments from their own perspectives. Dr. Theobald, a former Superintendent of Schools, urged that the judgments of peers and supervisors about job performance should be at the heart of the selection process rather than a written examination. "/I/t would be a very parallel certification to the state /certification/ rather than an eligible list in the sense that you have to take /persons/ off /it/ in the traditional Civil Service fashion."

Peter J. Strauss, President of Community School Board No. 2, stressed the weighty responsibilities of community boards for educational programs in their districts.

> We are elected officials, accountable to our community for the success or failure of our children. Although we are to be held accountable through the elective process for their performance we have little voice in the selection of our pedagogical staff.... Aside from the recent questionnaires sent out by the Board of Examiners, we have absolutely no voice in the development of the standards used by the Board of Examiners for licensing teachers. As to supervisors, while we now have some choice, the choice is limited as are the tools at our command for making an intelligent selection.

Dr. Edythe J. Gaines, Community Superintendent of District No. 12, described the problems the current selection process poses for a community superintendent trying to staff her schools. It is a tale of frustration characterized by such handicaps as limited choices from a centralized list and ineligibility of experienced professionals recruited by the community district. Dr. Gaines summarized as follows:

> The.../process/ is unnecessarily centralized. We can't select the staff we need for our unique needs. What could we do if our system became more open? We could recruit our own staff and therefore we could seek staff in

> less restrictive talent pools. We would not have to go to Puerto Rico or the South to find the people we are looking for. They are right in our own backyard...,I am not only talking about the ethnic or bilingual thing. I am talking also about people who understand what open learning is about and who want to be a part of that.... We could devise truly neaningful staff development programs locally arranged ... by which we could optimize their ability and minimize weakness....We could make our schools more human and humane institutions which would develop not only our children but everybody in the system including teachers, assistant principals, principals and even community superintendents.

Frustration with the current highly centralized selection mechanism and the belief that largely local selection would operate more effectively were not limited to community superintendents. Witnesses at other professional supervisory levels within the system shared Dr. Gaines' views. Several school principals who testified at the hearings said that the present selection process was not only inconsistent with the exercise of meaningful responsibility by elected community boards and their superintendents - it was consistent with the principal's discharge of his or her responsibility.

Certain defenses of the current selection process which have already been discussed--that it results in a larger pool of eligibles and greater diversity, and that it ensures due process and a system of merit and fitness--could be raised here as well. A more pointed argument, which has also been discussed, is pertinent. Dr. Greene maintained that a completely decentralized personnel system would be costly and duplicative.

> I said we have 50,000 teachers applying to us.... Are the 50,000 people going to apply to Local School Board 1 and also to Local School Board 2 and 3 and 4?

> Is each local school board going to screen 50,000 or a thousand who are on the principal's list...? Or, if we have City College or Hunter College and you have 30 different school boards, each one with a topnotch recruiting unit, two, three ...top recruiters,high salaried people, should each of the 30 go to Hunter College and give them pep talks to come to their unit?"

d. Accountability and Promotion.

Many witnesses urged that performance on the job should be the principal basis for selection and promotion. In theory, it already plays an important role. But most witnesses agreed, evaluation of performance has not in fact been very meaningful.

Dr. Lang testified that the probationary period is of critical importance because "...the only way to really know whether a teacher is a good teacher is by giving him the opportunity to teach and observing him as he teaches." Nevertheless, Dr. Lang's view is that "...the school system has used the probationary period very little in the past, too little...."

Dr. Greene, a member of the Board of Examiners, expressed this view also, but from a somewhat different perspective. According to his testimony, a number of changes were made in the examination process, such as omitting the essay questions with respect to teaching techniques, "...on the promise that the probationary period would be made use of in a proper way. That utilization never occurred...."

City Board President Murry Bergtraum also stressed the importance of the probationary period:

> .../T/his Board and the Chancellor... feel that the real examination process for teachers or for supervisors should

> be on the job, and that accountability for the performance during a probationary period is more important to insure quality of performance than any other method, so that examination processes which go into elaborate systems of trying to forecast performance on the job might very well not direct themselves to these subjects. [T]he process of being able to direct to another profession people who do not perform on the job should be looked at because in New York today... it is extremely difficult to use the probationary period as a performance period.

What accounts for this difficulty? According to Mr. Bergtraum, it is that many restrictions and formalities have been built into the process by rulings of the State Commissioner of Education, by union contract provisions and, to a lesser extent, by statutory provisions. In his words:

> I think that the probationary period must be considered part of the examination process...that a person should be able to be, in a sense, passed or failed...based on their superior's assessment of their performance with some minor safeguards but no elaborate process where it becomes an adversary proceeding between attorneys...as if they were tenured. If there is a distinction between tenure and non-tenure, that's where it should be. That's where we should get rid of people who can't teach and not by constructing examinations which never really test the ability to teach anyway....

Mrs. Blanche Lewis, President of the United Parents Associations, shares Mr. Bergtraum's view. She testified, "Our experience indicates that under existing law and regulation it is almost impossible to separate from service even the most incompetent professional."

A different explanation for the ineffectiveness of performance evaluation was offered by Principal Irving Flinker. He attributed

the difficulty to the fact that "...the teacher comes to the school with a license granted by an authoritative body, namely the Board of Examiners. The principal has greater difficulty validating his objections /in order/ to dismiss the teacher when the teacher comes with such a license." Mr. Flinker contrasted the relative ease with which principals can screen out unsatisfactory professionals with others with substitute, rather than regular licenses.

The only testimony which defended, at least in part, the current system of accountability was from UFT President Shanker. He said that, although few teachers, probationary or tenured, are formally removed on the basis of poor performance, many are advised informally that they should leave and, if they do, that they will receive good recommendations. "There is nothing wrong with the present procedures," said Mr. Shanker, "if they are used. They weren't used in many cases or, when they are, it is an informal procedure that prevails...."

The importance, theoretical or actual, of performance evaluation is certainly not limited to teachers. Indeed, perhaps it should play an even larger role in promotions to supervisory positions.

As we have seen, there is very little effort to recruit applicants for supervisory positions from outside New York City. Some witnesses also maintained that the selection process discriminates against outsiders. As a result, virtually all supervisors come from within the school system, in most cases after a rather lengthy period of service. During their service they have accumulated a substantial number of ratings from supervisors. If those ratings were meaningful, they would be a valuable basis for appraising applicants; they would provide the kind of performance-based data that many witnesses said was the best basis for selection.

Yet, ratings have played a relatively minor role in the establishment of eligible

lists. For most supervisory positions, the written test and oral interview dominate the examination process just as they do for teaching positions. According to Dr. Greene this is because good performance as a teacher does not necessarily suggest that the person would perform well as a supervisor. Peter Strauss, President of Community School Board No. 2, agreed that good teachers were not necessarily good supervisors but drew a different conclusion. He criticized the entire personnel system because it induced successful teachers to aspire to supervisory positions "because it was the only route to economic and professional success." At the same time, the qualifications required of candidates for supervisory positions virtually assure that they must have substantial teaching experience.

3. Alternatives To The System.

Exploring possible alternatives to the current New York City school personnel system was an important goal of the hearings. For it was a clear commitment that the hearings not only identify and analyze existing procedures but serve as a basis for sound recommendations. Toward this end, a wide range of expert witnesses were called because of their leadership in teacher education, selection techniques, especially testing, and new and innovative programs preparing school personnel on all levels; or because they represented state education departments and city school systems actively engaged in developing new forms of personnel selection. In addition, all witnesses who testified, and especially those currently serving in leadership roles within the New York City school system, were asked to assess the merits of possible alternatives.

The emerging consensus was one of general discontent with traditional methods of selection, all of which rely heavily on pre-employment preparation and give little attention to effective measurement of actual performance. Screening based on knowledge or skills, presumably developed in formal academic course work, was considered by virtually all witnesses

to be an unreliable or at least incomplete measure of subsequent performance. To date, most of licensure has been based on the questionable assumption that knowledge can automatically be converted into appropriate behavior.

As a result of this general discontent a variety of alternatives to the current employment process were recommended. The major ones are as follows:

a. State Certification With Local Selection.

The majority of witnesses testifying at the hearings recommended state certification, for initial screening, and local selection, as a logical and preferable alternative, because it would simplify the screening of potential candidates, minimize exclusionary aspects and separate more clearly the professional certification (or licensing) stage from the actual employment stage of the personnel system.

Although far from perfect in its current form in New York State, certification meets the primary objectives demanded by progressive educators of opening up the system to a broader spectrum of candidates and allowing those closest to the scene, the community school boards, to make the ultimate hiring decisions. In other words, it would offer to New York City's decentralized districts the same degree of flexibility and responsibility in selecting staff now enjoyed by almost all other school districts in the State and country. In exercising their selection responsibilities - and selection begins only after initial screening through state certification - community boards could use any selection technique they thought suited their particular needs. Freedom to experiment, according to a number of witnesses, could result in valuable data about different selection instruments.

Opponents of state certification contend that, at present in New York, it is merely a prefunctory review of a candidate's transcript, testifying only to the completion of an

arbitrary number and kind of college courses. As such it is no assurance of competence. Moreover, they say the administration of certification has often been snarled by bureaucratic delays. Much of the opposition to reliance on state certification, even for a preliminary screening instrument, focussed on the question of community school boards' capacity to do an effective and objective job in selection, primarily because it was feared that removal of a centralized merit system would permit the renewal of the historic problems of patronage and political pressure the Board of Examiners system was designed to prevent.

Advocates of state certification and local selection were not unaware of these problems. None claimed that current certification criteria are entirely satisfactory, nor that community school boards have at hand all the resources to make appropriate selection. Indeed, a sizable portion of the hearings' time was addressed to needed reforms in certification and to the added facilities required by community school boards.

State certification is not claimed to be a valid predictor of teacher performance. It neither purports to be such a predictor nor is it generally regarded as such. According to several witnesses, this distinguishes it from the Board of Examiners system. State certification is only a first screening and not a selection device, for certification is no guarantee of employment. Under prevailing conditions, placement on an eligible list by the Board of Examiners is tantamount to a guaranteed job in the city's schools. Under certification, determination of fitness for a particular job becomes the province of the actual employers who are free to superimpose any combination of testing, interviewing, observation, review of records, or any other objective device considered effective to meet the needs of a particular job. For both initial hiring and for promotion to higher levels, the combination of state certification and local selection opens hiring beyond the confines of those who have successfully passed

a particular examination at a given time, and allows employers to weigh qualities of training, experience and personality in accordance with the demands of a particular role.

Particularly pertinent was the testimony of Superintendent Joseph Manch of Buffalo, where a change in the law has freed the appointment of principals and supervisors from the examination process. The change in the law was secured, according to Dr. Manch, because of the recognition "...that we were not getting capable employees as a result of our examination procedure and were unable to appoint and assign persons, and most particularly of the minority community, Black teachers and administrators, in a way in which we .../could maintain/ a good balance." The law was changed in 1968 and in two years the ratio of minority personnel in the exempt categories was raised substantially, without any discernible lowering of standards. According to his testimony, this experience has reinforced Dr. Manch's conviction that a separate city-wide examination for all categories of personnel is an unnecessary restriction.

State certification is less cumbersome and costly than the present New York City system, acording to a number of witnesses. In essence, it depends on the quality and relevance of college preparation. In this city, where the majority of applicants have attended local institutions, qualitative considerations are of less significance, for it would be feasible, as Dr. Fischer. President of Columbia Teachers College, suggested, to observe and accredit primary training sources. The relevance of training to subsequent performance is the focal concern. Of particular encouragement is the view of New York State Commissioner of Education Ewald B. Nyquist:

> There are two basic criticisms of certification as we now know it. First of all, judging fitness for licensure is based on input - courses taken - rather than output - classroom

performance. Second, the decision about certification is made by agents far from the candidate for licensing himself. The decisions should be made by persons closer to the candidate.

In New York State, in common with other states, in both the State Education Department and in teacher training institutions, there is an increasing awareness of the deficiencies of traditional training and licensing practices. Indications are that New York is lessening dependence on formal criteria and moving towards a program-approval approach, evidenced by growing state sponsorship and support of innovative programs. Perhaps the strongest argument for reliance on state certification is that the State's education authorities appear to be more change-oriented and the system manifested greater readiness to adopt new forms of training and new criteria for certification.

An array of experts in the field of education testified to the desirability of developing performance-based criteria for selecting and evaluating staff, and the attendant modifications in training of personnel. An over-view of activity on the national scene, presented by Dr. Robert Poppendieck of the U.S. Office of Education, disclosed an active interest in at least thirty states. Many states are engaged currently in defining the specific competencies that teachers should possess and that training programs should develop. Although no state, as yet, has fully developed the concepts and the mechanisms needed to move to performance criteria, a number, including Oregon, Washington, California, Minnesota, Michigan, Pennsylvania, New Jersey, Texas and Florida, are in the forefront.

Representatives of the state education departments of New Jersey, Washington and Minnesota testified at the hearings. The three states are developing performance-based criteria and are in effect seeking to change the role of the state in the certification or licensing process. The three exemplify some of the possible variations in approach to a common goal.

In New Jersey, sixteen statewide task forces, each composed of school administrators, teachers, representatives of higher education - including schools of education and other related academic fields, curriculum specialists, and measurement and evaluation specialists - focus on different teaching areas. The task forces are supplemented by advisory committees composed of representatives of the schools, civic organizations and the community, to assure backing for their recommendations. While current action is limited to initial certification, similar studies will be conducted for all job levels and types within the schools. The intent is to free certification from dependence on any single form of preparation, permitting assessment of pertinent skills developed in any relevant training or experience - the Peace Corps, Vista, or community work. The timetable calls for field testing of new criteria by the fall of 1972 and formal institution the following summer.

In Washington, the focus has been on redesigning teacher education. Consortiums composed of representatives of professional associations, school personnel, parents, and colleges and universities are engaged in framing new programs and recommending standards against which performance can be assessed. Performance standards were adopted in 1968 for school support personnel - including counsellors - and it is hoped that plans for all staff levels will be complete by the fall of 1971. Here the emphasis is on involvement at the local level. Each consortium is to recommend standards to be applied in programs within a specific locale. Once the plans are approved, the state function will be to monitor programs to insure fulfillment of the standards set. The essential ingredient is to change the role of the State and shift the responsibility for developing criteria to the local level, thereby allowing considerable leeway to individual colleges and local groups and counteracting customary pressures for uniformity. The expectation is that without any across-the-board state requirements, training and certification standards will be more responsive to local needs and far less resistant to change. The State will certify

all personnel in three stages - preparatory, initial and continuing - to insure the involvement of all related agencies throughout the career of school personnel.

Minnesota, with a tradition of program-approval based certification, is also modifying the state role, shifting it from a regulatory to an enabling function. The State will make available the training local needs require. Competence is viewed as a management decision, best determined at the local level. Program accreditation task forces, currently working on establishing standards, are composed of local representatives of all interested parties including members of the local community. Major changes in certification, both in form and in content, are underway. Life certification was abolished by an act of the Legislature in 1970. Current plans envision two types of certificates - entrance and continuing - with the latter to run a maximum of five years. Committees in each school district, composed of professional and community representatives, will recommend candidates for renewal. A state committee will coordinate local activity and set such broad standards as evolve out of local training plans. It is anticipated that new legislation will require, for example, that all teacher training institutions offer a human relations program in conjunction with community groups, show a plan to develop and evaluate specific competencies, and design a program of self-evaluation. Performance-based criteria, it is hoped, will open promotional sequences beyond the usual single hierarchy, permitting flexible horizontal and vertical career patterns. Ultimately, all distinctions in title and rank will be functional, and such arbitratry distinctions, as for example the difference between paraprofessional and teacher, now reflecting formal education, will disappear.

Noteworthy is the fact that written examinations are not envisioned by any of these states as a part of the certification process. All three plans call for colleges to attest to that part of teaching skill that can be measured outside of the job setting. Any college whose graduates proved deficient in literacy or subject matter knowledge, according to Dr. Ward Sinclair, of the New Jersey

State Education Department, would be unable to place candidates and would lose state approval. The appropriate role of the State will be to stimulate and evaluate programs, rather than to stipulate their form, and to automatically certify graduates of approved programs.

Although New York State has not progressed as far as some other states in developing new criteria, it has become increasingly flexible in the administration of standard criteria and has established some alternative routes to certification through proficiency examinations and approval of experimental training programs. Sample programs now in force in New York City colleges were presented at the hearings, including field-based teacher training, training for open-corridor teaching, and non-degree training of leaders in fields outside of education for managerial roles in schools.

A variation on using improved state certification to screen candidates would be the development of an internship or provisional certification program. The theory, articulated by a number of witnesses, is that the initial period of teaching or supervisory service should be a continuation of professional training as well as an evaluation opportunity. To recognize it as such would encourage the development of more meaningful in-service training programs and other professionally supportive efforts. Also, to structure the period as an internship would encourage careful evaluation before the granting of more permanent status.

b. National Teacher Examination.

Those who favored state certification with local selection over the current system did so in part because of the problems with the Board of Examiners examination process. Yet local selection might include use of a written test of the community board's choice. A number of witnesses suggested, as a second alternative, that a properly validated written test might play a useful, if limited, role in the overall selection process.

If any test is to be used, the National

Teacher Examination appears to be the logical instrument. Developed by the Education Testing Service and initiated in 1940, it is already used by four states for all their school districts, and in 1,100 additional school districts. Moreover, New York City itself currently makes use of the NTE under the 40% provision of the Decentralization Law and as an alternative examination in outreach recruiting activities conducted by the Office of Personnel. Last year some 2,300 teacher candidates for the city school system used the NTE alternative. The NTE offers the advantage of broader application, permitting nationwide recruiting. The test is given four times a year in some 400 centers and candidates' scores are readily available. The test, however, has some practical disadvantages when compared with the Board of Examiners test. It is more costly to the individual applicant (although presumably less costly to the school system as a whole) and covers only a relatively few teaching subject areas (especially as compared to the 1,200 licenses for which the Board of Examiners examines).

In terms of validity as a selection instrument, the NTE appears to have some elements of superiority over the New York City Board of Examiners tests, for it is prepared by a permanent staff of experts in both job analysis and test design, and is subject to regular review and revision, twice a year in common branches and annually in teaching areas. (Every three to four years it is completely redone.) The examination is carefully studied for content validity to insure that it tests only knowledge gained in college programs. The chief value of the National Teacher Examination, according to its developers, is to supplement and, to some extent, standardize academic records of perspective candidates.

There are, however, two fundamental limitations of the NTE in common with any standardized written examination: first, the question of predictive validity, and second the impact on minority selection. With respect to the former, the Educational Testing Service itself makes clear the limitations of the NTE as a predictive instrument. According to Dr. Deneen, content-

validated tests are predictive only to the extent that competent performance requires the kind of knowledge gained in teacher-training programs. ETS operates on the assumption that a test that measures college training can make a contribution to the selection process but makes no claim beyond that. In Dr. Deneen's words:

> ...to evaluate, for example, a prospective high school mathematics teacher's knowledge of mathematics is surely reasonable. To predict his overall performance as a math teacher on a basis of test scores alone is not reasonable....Results from the National Teacher Examination say nothing about other factors critical to teaching, e.g., physical skills, motivation, attitudes, ability to communicate with children, and the like.

Thus, according to its designers, the NTE should only be used as one of several selection criteria.

The consensus of the test experts who testified was that the development of tests to measure effective teacher capacity is hampered by the unavailability of good measures of performance. Efforts in this direction offer some hope that practical and stable measures of demonstrated ability will soon materialize. When such measures do exist, they, together with tests of subject area knowledge, will upgrade substantially the selection process and, thereby, the quality of teaching. Currently, Dr. Deneen believes that NTE scores could be given substantial weight in initial screening in the absence of reliable performance-based criteria. But he cautions that over-reliance on test scores even now must be avoided.

How the NTE is used, therefore, is the critical consideration, even if used as only one of several criteria, particularly when one objective is to give equal opportunity to minority candidates. The NTE itself sets no passing scores. Test scores are equated to a percentile rank comparing individual scores with national norms. The test is an achieve-

ment test directly reflecting college training and not an aptitude or intelligence test. The scores are more accurately indicative of the content of graduate programs than individual capacity. The decision of how to use test scores, whether to set cutoff points and at what level they are set, is left to the determination of employers. And these decisions are the significant ones, especially in relation to minority candidates.

The NTE, in common with other standardized tests, has been charged with being discriminatory. Statements ascribing bias to the examination were made at the hearings. Daisy Hicks said, "The National Teacher Examination is another examination based on things like all examinations we had to face and not based on norms where the Black man or the Puerto Rican American was included." She reported that many schools which "reached for the National Teacher Examination in the effort to integrate staff have ceased using this examination because they found it screened out Blacks." James Watkins agreed that the NTE was as discouraging to minority groups as other tests.

According to the test designers, however, the discriminatory effect is not a product of the test, but flows from the establishment of required passing scores. Low test scores for a given group, noted Dr. Deneen, are not necessarily an indicator of poor test construction. As we have seen, according to Dr. Deneen, the test scores may confirm the disparity of educational opportunity but do not indicate individual deficiency. Moreover, the creators of the NTE do not claim that it adequately examines persons with limited facility in English or those trained in other settings such as Puerto Rican colleges. The Educational Testing Service, cognizant of these limitations, is actively working with panels of Black educators to scrutinize the National Teach Examination for manifestations of subtle bias, and is constructing a Spanish version, as well as a new test focused on teaching in urban settings.

The foregoing suggests that the use of rigid cut-off scores may disqualify minority applicants and it is, therefore, incumbent upon

school boards to use other selection methods either in substitution for or as supplements to the NTE. In Dr. Deneen's words, "Precisely because teaching competence cannot be predicated on the basis of college achievement alone, measures of such achievement should never be the only criteria for selecting beginning teachers." Stephen Pollak underscored the questionable constitutional validity of total reliance on any standardized test which measures prior training not clearly consistent with job performance, when such measures tend to exclude minorities.

Thus, NTE appears to be only a partial answer to the current New York City problem. Under the 40% provision of the Decentralization Law (which specifies a passing score on the NTE equivalent to the average passing mark required of teachers during the prior year by the five largest cities), using the NTE as a qualification may be a dubious merit unless other factors enter into selection decisions. The 40% rule, admittedly a legislative compromise, may nevertheless benefit some city schools. Dr. Lang stated, "I hope that it /the NTE alternative/ will bring better qualified teachers as well as more Blacks and Puerto Ricans into the system. It will be closer to the practices of other school systems giving the principal more authority in terms of his staff, involving the principal in the selection of the teacher, and the principal then having a greater responsibility in the training of the teacher."

The value of the NTE alternative needs to be assessed and could be by studying those teachers now employed in the city's schools brought in by this route. They could serve as the basis of comparison to determine how effective this test is in providing school districts with wider sources of personnel and how they compare with those selected by the traditional New York City methods. The NTE in its current form, however, does not seem to provide the whole answer to the complex question of selecting school personnel.

c. Statewide Examination.

A few witnesses, mainly those who favor

maintenance of the Board of Examiners system, supported a statewide examination as a satisfactory alternative. Board of Education President Murry Bergtraum testified in favor of elimination of the Board of Examiners as a quasi-independent agency, but recommended a New York State examination "...equivalent to the one given for the Bar, not as difficult I hope, or for other professions" because he considers current state certification, "the accumulation of courses", to be inadequate. UFT President Shanker and CSA President Degnan generally concurred. Mr. Shanker would support abolition of the Board of Examiners if a similar statewide examination were in existence. The rationale offered by Mr. Shanker analogized teaching with other licensed occupations. He said "...there are literally hundreds of occupations where the State has the responsibility for maintaining particular levels of service and standards in terms of entry into that field, and I think it would be kind of ridiculous if the City of New York or the State of New York says that to drive an automobile and to sell real estate or insurance one needs a written examination but to teach children of the City of New York, that is not required." A similar view voiced by Dr. Bernard Friedman, Community Superintendent of District#7 in the Bronx, was that "...no examinations at all show an open contempt for the profession as it is. Society in a sense puts its emphasis on a profession to the extent that it examines for it. I consider that eliminating examinations would be synonomous with a lowering of standards and in effect indicate to minority groups that they were unable to compete." In other words, the apparent justification for such an examination is to bolster the image of the teaching profession.

Critics of the current system, however, saw a statewide examination as no real alternative. Dr. Marilyn Gittell, Director of the Institute for Community Studies at Queens College, as well as other witnesses, found such an examination another stumbling block for candidates from outside the State. The analogy

with other occupations was rejected because, according to Dr. Robert A. Dentler, Director of the Center for Urban Education, it would be "...incorrect in 1971 to recommend that an obsolete system such as the Bar examination be applied in what is still only a very incompletely emergent profession." David Seeley, Director of the Public Education Association, considers the analogy irrelevant "...because a teacher, unlike a doctor or a lawyer, does not set himself up in practice with no checks on his ability. He must be hired by professional educators or public authorities who have both the opportunity and the competence for reviewing an individual's qualifications."

The advocates of a statewide examination themselves are aware that such a procedure would not be free of problems. An appropriate test would take time to develop, and Mr. Shanker recognizes it might be opposed by most teachers in the State who now need only course credit for certification. Perhaps the defects of a statewide examination as an alternative were best stated by Dr. Greene when he said, "they /the State/ would get the same complaints that the Board of Examiners face. There is nothing magical about their tests that would avoid charges of discrimination. There are states that have tried testing for certification and they have been accused of discrimination. The tests are too hard and take too long - the same criticisms we face." In sum, a statewide examination would be imposing on the State that which only two cities in the State now employ and which Buffalo has been moving toward eliminating.

Appendix A

List of Witnesses

Monday, January 25, 1971

Mr. Murry Bergtraum, President, Board of Education

Miss Gertrude Unser, Chairman, Board of Examiners

Dr. Harvey Scribner, Chancellor, Board of Education

Dr. John J. Theobald, Executive Vice-President, New York Institute of Technology

Mr. Peter J. Strauss, Chairman, Community School Board #2

Dr. Edythe Gaines, Community Superintendent, School District #12

Mr. Irving Flinker, Principal, George Gershwin Junior High School 166, Brooklyn

Dr. Theodore Lang, Deputy Superintendent in charge of personnel, Board of Education

Mr. Frederick Williams, Assistant Superintendent, Division of Recruitment, Training and Development, Board of Education (now, Deputy Superintendent for Personnel)

Mrs. Daisy Hicks, Coordinator, Joint Employment Recruitment Program, Bureau of Educational Staff Recruitment, Board of Education

Mr. James Watkins, Teacher Recruitment Program, African-American Teachers Association

Dr. John B. King, Professor of Education, Fordham University

Mr. Vernal Pemberton, Fordham internee; assistant to Community Superintendent, School District #4

Mr. Gladstone Atwell, Director, Auxiliary Educational Career Unit, Board of Education

Monday, January 25, 1971 (cont.)

Mrs. Joan Burton, Educational Assistant, P.S. 134, Queens

Tuesday, January 26, 1971

Dr. Jay Greene, Member, Board of Examiners

Mr. Isaiah E. Robinson, Jr., Vice-President, Board of Education

Mr. Andrew Donaldson, Community Superintendent, School District #9

Mr. Philip Kaplan, Chairman, Community School Board #15

Mr. Dennis Hayes, Program Director, Pre-Service Training Unit, Board of Education

Miss Wendy Lehrman, Teacher, P.S. 87, Manhattan

Mr. Lloyd B. Hunter, President, Institute for the Advancement of Urban Education; former New York City teacher

Mr. Victor Gotbaum, Executive Director, District Council 37, American Federation of State, County and Municipal Employees

Mr. Ira Glasser, Executive Director, New York Civil Liberties Union

Mr. Louis Nieves, Executive Director, Aspira, Inc.

Dr. Eugene Callender, President, New York Urban Coalition

Mrs. Rose Falcon, Teacher Coordinator, Parent Leadership Program, United Bronx Parents

Mrs. Dorothy Anderson, Director, Social Concern Committee of Springfield Gardens, Inc.

Mrs. Ruth Buck, former guidance counselor

Mr. Louis Caban, United Bronx Parents

Appendix A (3)

Tuesday, January 26, 1971 (cont.)

Mr. Irving Chin, Chairman, Education Committee, New York Chinese Community Council

Mrs. Doris Conklin, United Bronx Parents

Dr. Cecil Forster, Chairman, One Hundred Black Men

Mr. Reuben Gordon, former teacher

Ms. P. Hillman, teacher

Ms. Cynthia Jenkins, Southeast Queens Community Corporation

Mrs. Rhoda Karpatkin, member, Community School Board #3

Ms. Rita Linquist, member, Congress of Italian-American Organizations

Ms. Frances Moses, Chairman, Education Committee, Tompkins Tenants Association, Inc.

Ms. Faith Ringgold, art teacher, Brandeis High School, Manhattan

Arnold Rothbaum, Esq., Williamsburg Legal Services

Mr. Peter Saltz, former President, Jamaica NAACP

Mr. Morris Seltzer, former member, Harlem Committee, UFT

Mrs. Carmen Snead, Field Administrator, Community Learning Center, Center for Urban Education

Dr. Joseph F. Valletutti, Chairman, Congress of Italian-American Organizations

Mr. David Weiner, legislative representative, Teachers Action Committee

Mr. Elliott Zeitlin, Principal, Junior High School 67, Queens

Appendix A (4)

Wednesday, January 27, 1971

Mr. Walter Degnan, President, Council of Supervisory Associations

Mrs. Blanche Lewis, President, United Parents Associations

Mr. Albert Shanker, President, United Federation of Teachers

Mr. David Seeley, Director, Public Education Association

Mr. Hector Vazquez, Executive Director, Puerto Rican Forum

Dr. Lillian Weber, Professor of Education, City College

Dr. Robert Thorndike, Professor of Psychology, Teachers College, Columbia University

Dr. Richard Barrett, Office of Admissions Services, City University of New York

Dr. James R. Deneen, Senior Program Director for Teacher Examinations, Educational Testing Service

Mr. Stephen J. Pollak, former Assistant Attorney General in charge of the Civil Rights Division, U.S. Department of Justice

Mr. Steve Aiello, Chairman, Educational Committee, Italian-American Civil Rights League

Representative for Sonia Allen, Education Action Program, Bedford-Stuyvesant

Mr. Marvin Bornstein, West Side Parents Union

Mrs. Marilyn Braveman, Education Director, American Jewish Committee

Mr. Charles Burton, Chairman, Education Committee, Council Against Poverty

Mr. William Degraffenreid, III, student, Brandeis High School, Manhattan

Appendix A (5)

Wednesday, January 27, 1971 (cont.)

Mr. Lalo Dextre, President, Parents Association, I.S. 44, Manhattan

Mr. Herbert English, Acting Assistant Principal, Junior High School 35, Brooklyn

Miss Desdre Fleming, student, Brandeis High School

Dr. Bernard Friedman, Community Superintendent, District #7

Dr. Martin Frye, Community Superintendent, District #4

Miss Belle Bavine George, student, Brandeis High School

Mr. W. Rogers Gist, Community Teachers Association

Miss Judy Heumann, Executive President, Disabled-In-Action

Mr. John Hunter, teacher, Benjamin Franklin High School, Manhattan

Miss Loretta James, student, Brandeis High School

Mrs. Nellie Jones, Director, Center for Community Education, Teachers College, Columbia University

Ms. Esther Levenburg, teacher

Mrs. Linda Linton, Vice-President, New York Association of Black School Supervisors and Administrators

Dr. Alvin Lashinsky, Queens Jewish Community Council

Mr. Jorge Maldonado, teacher

Mr. Lloyd S. Mapp, Education Coordinator, East New York Community Corporation

Ms. Anna S. Murphy, Community Relations Consultant,All Day Neighborhood Schools Program

Appendix A (6)

Wednesday, January 27, 1971 (cont.)

Mr. Vincent Nassetta, Equal Employment Opportunity Committee, Italian-American Civil Rights League

Reverend Vincent Resta, President, Community School Board #4

Mrs. Doris Rosenblum, Parents Association, P.S. 75, Manhattan, and President, Stryker's Bay Neighborhood Council

Mr. Seymour Samuels, Vice-President, Queens Jewish Community Council

Ms. Patricia Seabrook, teacher

Miss Barbara Washington, student, Brandeis High School

Dr. Alfred Weinstein, President, New York City Junior High School Principals Association

Ms. Anne G. West, National Organization for Women

Ms. Helene Woolford, Corona-East Elmhurst Community Corporation

Thursday, January 28, 1971

Dr. John H. Fischer, President, Teachers College, Columbia University

Dr. Laurence Iannacone, Professor of Education Administration, University of Toronto

Dr. Robert A. Dentler, Director, Center for Urban Education

Dr. Phyllis Wallace and Miss Jeanette Hopkins, Vice-Presidents, Metropolitan Applied Research Council, Inc. (MARC)

Dr. James Shields, Professor of Education, City College

Dr. Doxey Wilkerson, Chairman, Department of Curriculum and Instruction, Yeshiva University

Thursday, January 28, 1971 (cont.)

Dr. Harold Haizlip, Headmaster, The New Lincoln School

Dr. Michael Usdan, Professor of Education and Head-Designate of Instructional Program in Educational Administration, City University of New York

Dr. Marilyn Gittell, Director, Institute for Community Studies, Queens College

Professor Mortimer Kreuter, Director of Teacher Preparation, State University at Stony Brook

Mr. William Lynch, Jr., New Careers Laboratory, New York University

Professor Judith Rothschild, Director, Urban Leadership Development Program, School of Continuing Education, New York University

Mr. Gary Calnek, Central Coordinator, Public Service Careers Program, Manpower and Career Development Agency, Human Resources Administration

Friday, January 29, 1971

Dr. Frank Riessman, Director, New Careers Development Center, New York University

Dr. Robert Poppendieck, Director, Field Services, Bureau of Education Personnel Development, U.S. Office of Education

Dr. Roy Edelfeldt, Executive Secretary, National Commission on Teacher Education and Professional Standards, National Education Association

Statement from Dr. Ewald B. Nyquist, New York State Commissioner of Education

Dr. Ward Sinclair, Associate Director, Office of Teacher Education and Certification, New Jersey State Education Department

Dr. Wendell Allen, Assistant Superintendent for Division of Teacher Education and Certification, Washington State Education Department

Dr. Patricia Goralski, Director, Professions Development Center, Minnesota State Department of Education

Friday, January 29, 1971 (cont.)

Dr. George Dickson, Dean, School of Education, University of Toledo

Dr. Joseph Manch, Superintendent of Schools, Buffalo, New York

Mr. Aubrey McCutcheon, Deputy Superintendent for Staff Relations, Board of Education, Detroit, Michigan

Mrs. Marina Brook, Acting Director of Contract Compliance, Puerto Rican Community Development Project

Mrs. Anna Conigliaro, former member, New York City Board of Education

Mrs. Juanita Cruz, parent

Mrs. Vera David, parent

Mrs. Dorothy Joseph, Coordinator, High School Redirection Program, Board of Education

Mr. Hal Koppersmith, former teacher

Mr. Roderick MacKenzie, teacher

Mrs. McIntosh, parent

Mr. LeRoy McMorris, member, Public Action Committee for Education, District #20, Brooklyn

Mr. Richard Parrish, teacher; member of United Black Caucus of Teachers; Treasurer, National Afro-American Labor Council

Mr. Frank Pereira, candidate for teaching license

Mrs. Pullim, former teacher

Friday, January 29, 1971 (cont.)

Mr. Irving Ravin, teacher

Mr. David Salvadore, candidate for teaching license

Mrs. Rose F. Sealy, Director, Adult Learning Center, Brooklyn College

Mr. Roy Sicular, teacher

Mrs. Mildred Tudy, parent

Mrs. Joan Williams, parent

Appendix B

Summary of Equal Employment Opportunity Commission Guidelines on Employee Selection Procedures.

The Guidelines, which are issued as Title 29, Chapter XIV, §1607 of the Code of Federal Regulations, provide in substance as follows (quotes are from the text of the guidelines):

§1607.1 Statement of purpose. The guidelines are designed to serve as a workable set of standards for employers and others in determining whether their selection procedures conform to Title VII of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, religion, sex or national origin. Application of the guidelines is especially important, according to the EEOC, because of the increase both in total test usage and in doubtful testing practices having discriminatory effects. "It has also become clear that in many instances persons are using tests as the basis for employment decisions without evidence that they are valid predictors of employee job performance." Where that is the case, "the possibility of discrimination in the application of test results must be recognized."

§1607.2 "Test" defined. A "test" is any paper-and-pencil or performance measure, including a review of record and educational background, scored interviews and scored application forms, used as a basis for any employment decision.

§1607.3 "Discrimination" defined. "Discrimination" is the "use of any test which adversely affects hiring, promotion...or any employment...opportunity...unless: (a) the test has been validated and evidences a high degree of utility...,and (b) the person giving or acting upon the results of the particular test can demonstrate that alternative suitable hiring...or promotion procedures are unavailable for his use."

§1607.4 Evidence of validity. "Evidence of a test's validity should consist of empirical data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior...." Where technically feasible (that is, having a sufficient number of minority individuals to achieve findings of statistical and practical significance and having the opportunity to obtain unbiased job performance criteria), a test should be validated for each minority group with which it is used;"that is, any differential rejection rates that may exist, based on a test, must be

relevant to performance on the jobs in question."

§1607.5 Minimum standards for validation. Empirical evidence of a test's validity must be based on studies employing generally accepted procedures for determining criterion-related (i.e., predictive) validity. "Evidence of content...validity...may also be appropriate where criteria-related validity is not feasible. However, evidence for content...validity should be accompanied by sufficient information from job analyses to demonstrate the relevance of the content...." The research approach to developing such empirical evidence must meet the following minimum standards:

(1) The sample of subjects must be representative of the normal candidate group for the job in question (and "representative of the minority population available for the job...in question in the local labor market").

(2) "Tests must be administered and scored under controlled and standardized conditions, with proper safeguards to protect the security of test scores...."

(3) "Whatever criteria are used ...must represent major or critical work behaviors as revealed by careful job analyses", and they must be fully described.

(4) "...[A]ll criteria need to be examined to insure freedom from factors which would unfairly depress the scores of minority groups."

(5) "Data must be generated and results separately recorded for minority and nonminority groups wherever technically feasible....A test which is differentially valid may be used in groups for which it is valid but not for those in which it is not valid.... [W]here a test is valid for two groups but one group characteristically obtains higher test scores than the other without a corresponding difference in job performance, cutoff scores must be set so as to predict the same probability of job success in both groups." Also, in assessing the utility of a test, the relationship between the test and relevant criteria of employee performance must be statistically and practically significant, according to specified standards.

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§1607.6 Presentation of validity evidence. "The presentation of the results of a validation study must include graphical and statistical representations of the relationships between the test and the criteria, permitting judgments of the test's utility in making predictions of future work behavior. Average scores for all tests and criteria must be recorded for all relevant subgroups including minority and nonminority groups....Furthermore for each test that is to be established or continued as an operational employee selection instrument as a result of the validation study, the minimum acceptable cutoff (passing) score on the test must be reported. It is expected that each operational cutoff score will be reasonable and consistent with normal expectations of proficiency within the work force or group on which the study was conducted."

§1607.7 Use of other validity studies. When the number of subjects is less than that required for a technically adequate validation study, evidence from validity studies conducted in other organizations, if there is sufficient comparability, may be considered acceptable. The burden is on the employee to establish comparability.

§1607.8 Assumption of validity. There will be no assumption of validity based on the identity and professional status of the test designer or other nonempirical material. "Although professional supervision of testing activities may help greatly to insure technically sound and nondiscriminatory test usage, such involvement alone shall not be regarded as constituting satisfactory evidence of test validity."

§1607.9 Continued use of tests. An employer may be permitted to continue the use of a test which is not at the moment fully supported by the required evidence of validity only if (1) the employer "can cite substantial evidence of validity" and (2) "he has in progress validation procedures which are designed to produce, within a reasonable time, the additional data required." The employer may also "have to alter or suspend test cutoff scores so that score ranges broad enough to permit the identification of criterion-related validity will be obtained."

§1607.10 Employment agencies and employment services. [Not applicable].

§1607.11 Disparate treatment. A test, even though appropriately validated, cannot be imposed upon some applicants or employees but not others.

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"Thus, no new test or other employee selection standard can be imposed upon a class of individuals...who, but for prior discrimination, would have been granted the opportunity to qualify under less stringent selection standards previously in force."

§1607.12 Retesting. Candidates who failed an earlier selection process and have availed themselves of more training or experience should be provided with an opportunity for retesting and reconsideration.

§1607.13 Other selection techniques. Where unscored selection techniques are used, the employer may have to present evidence of their validity.

§1607.14 Affirmative Action. These guidelines do not in any way diminish an employer's obligation "to undertake affirmative action to ensure that applicants or employees are treated without regard to race, color, religion, sex, or national origin. Specifically, the use of tests which have been validated pursuant to these guidelines does not relieve employers...of their obligations to take positive action in affording employment and training to members of" minority groups.